

CHAPTER 10**EMERGENCY TRANSPORTATION TAX****Authority**

Unless otherwise expressly noted, all provisions of this Chapter 10 were adopted by the Director, Division of Taxation, Emergency Transportation Tax Bureau, pursuant to authority delegated at N.J.S.A. 54:8A, The Emergency Transportation Act.

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SUBCHAPTER 1. (RESERVED)**SUBCHAPTER 2. DEFINITIONS****18:10-2.1 Meaning of terms**

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, Division of Taxation in The Department of The Treasury, State of New Jersey.

Any other term used in the Emergency Transportation Tax Act and in these regulations shall have the same meaning as required by a comparable context under the laws of the United States relating to Federal income taxes, unless a different meaning is clearly required. Any reference to the laws of the United States shall mean the provisions of the Internal Revenue Code of 1954, and amendments thereto, and other provisions of the laws of the United States relating to Federal income taxes, as the same may be applicable to the taxable year.

18:10-2.2 Resident individual

The term "resident individual" includes:

1. All persons domiciled in this State, subject to the exceptions set forth in Section 2.3 (Persons not residents although domiciled in New Jersey) of this Chapter;

2. Any individual other than a member of the Armed Forces of the United States during an induction period, who is not domiciled in this State, but who maintains a permanent place of abode in this State and spends in the aggregate more than 183 days of the taxable year in this State.

Statutory References

As to "Resident" defined, see N.J.S.A. 54:8A-3.

18:10-2.3 Certain persons not deemed residents although domiciled in New Jersey

Any person domiciled in New Jersey is a resident for Emergency Transportation Tax purposes for a specific taxable year, unless for that year he satisfies all three of the following requirements:

1. He maintains no permanent place of abode in this State during that year;

2. He maintains a permanent place of abode elsewhere during that entire year;

3. He spends in the aggregate not more than 30 days of the taxable year in this State.

Statutory References

As to "Resident" defined see N.J.S.A. 54:8A-3.

18:10-2.4 Rules for days spent within and without the State

In counting the number of days spent within and without this State, presence within the State for any part of a calendar day constitutes a day spent within the State except that such presence within the State may be disregarded if it is solely for the purpose of boarding a plane, ship, train or bus for travel to a destination outside of the State, or while traveling by motor, plane or train through the State to a destination outside the State.

Statutory References

As to compilation of days spent in New Jersey see N.J.S.A. 54:8A-3.

18:10-2.5 Domicile

The term "Domicile" means the place which an individual intends to be his permanent home and to which he intends to return whenever he may be absent.

Statutory References

As to "domicile" see N.J.S.A. 54:8A-3.

18:10-2.6 Change of domicile

A domicile once established continues until the person in question moves to a new location with the bona fide intention of making it his fixed and permanent home.

(a) No change of domicile results when a person moves to a new location if his intention is to remain there only for a limited time. This rule applies even though the individual may have sold or disposed of his former home.

(b) The burden of proof is upon any person asserting a change of domicile to show that the necessary intention existed. In determining an individual's intention his declarations will be given consideration but will not be conclusive if they are contradicted by his conduct.

(c) If a person registers and votes in one place it is important but not necessarily conclusive as to his intentions, especially if the facts indicate that he did this merely to escape taxation in some other place.

18:10-2.7 Domicile not dependent on citizenship

Domicile is not dependent on citizenship; that is, an immigrant who has permanently established his home in New Jersey is domiciled here regardless of whether he has become a United States citizen or has applied for citizenship provided, however, a United States citizen will not ordinarily be deemed to have changed his domicile by going to a foreign country unless it is clearly shown that he intends to remain there permanently.

Example:

A United States citizen domiciled in New Jersey who goes abroad because of an assignment by his employer or for study, research or recreation, does not lose his New Jersey domicile unless it is clearly shown that he intends to remain abroad permanently and not return.

18:10-2.8 Person limited to one domicile

A person can have only one domicile. If he has two or more homes, his domicile is the one which he regards and uses as his permanent home. In determining a person's intention in this matter, the length of time customarily spent at each location is important but not necessarily conclusive.

18:10-2.9 Domicile of family members

(a) A wife's domicile follows that of her husband, but if they are separated in fact she may acquire her own separate domicile even though there has been no judgment or decree of separation.

(b) A child's domicile ordinarily follows that of his father, or of his mother after the father's death, until he reaches the age of self-support and actually establishes his own separate domicile. The domicile of a child for whom a guardian has been appointed is not necessarily determined by the domicile of the guardian.

18:10-2.10 Permanent place of abode

(a) A permanent place of abode means a dwelling place permanently maintained by the taxpayer, whether or not owned by him, and will generally include a dwelling place owned or leased by his or her spouse. However, a mere camp or cottage, which is suitable and used only for vacations, is not a permanent place of abode.

(b) A place of abode, whether in this State or elsewhere, is not deemed permanent if it is maintained only during a temporary stay for the accomplishment of a particular purpose.

Example:

An individual domiciled in another state may be assigned to his employer's New Jersey office for a fixed and limited period, after which he is to return to his permanent location. If an individual takes an apartment in New Jersey during this period, he will not be deemed a resident, even though he spends more than 183 days of the taxable year in New Jersey, because his place of abode here is not permanent. He will be taxable as a nonresident on his income from New Jersey sources, including his salary or other compensation for services performed in New Jersey; provided, however, if his assignment to the employer's New Jersey office is not for a fixed or limited period, his New Jersey apartment will be deemed a permanent place of abode and he will be a resident for tax purposes if he spends more than 183 days of the year in New Jersey.

Statutory References

As to "Permanent place of abode" see N.J.S.A. 54:8A-3.

18:10-2.11 Nonresident individual

(a) For tax purposes, a nonresident individual is any person who is not a resident as defined in Section 2.2 (Resident individual) of this Chapter. Except where these regulations specifically provide otherwise, all references to nonresidents are equally applicable to nonresident aliens.

(b) For the purposes of the Emergency Transportation Tax Act, a nonresident taxpayer is a person who is determined to be a resident of a critical area state under and pursuant to the laws of said state.

18:10-2.12 "Derived from sources within" defined

(a) "Derived from sources within" one state or another, as applied to entire net income, means such income and gain from all property owned and from salaries, wages, or compensation for personal services of whatever kind and in whatever form paid, and from all business, trade, profession or occupation carried on, in the particular state.

(b) No person who is not a dealer holding property primarily for sale to customers in the ordinary course of his trade or business, shall be deemed to carry on a business, trade, profession or occupation in a State solely by reason of the purchase and sale of property for his own account.

Statutory References

As to definition of "Derived from sources within" see N.J.S.A. 54:8A-4.

18:10-2.13 Critical Area State

"Critical Area State" means such other state bordering thereon within which there exists parts of an area, another part of which is in this State, within which area there is, as of January 1 of any year, a critical transportation problem in respect to the transportation of persons and property interstate.

Statutory References

As to Critical area state defined see N.J.S.A. 54:8A-5.

18:10-2.14 Legislative finding of critical transportation problem

(a) The Legislature finds and declares that a critical transportation problem exists in connection with interstate transportation between this State and another bordering state when there is such number of daily commuters between said states as to create a severe peak-load demand requiring facilities and services, by any means or mode of transportation, far in excess of those needed for normal travel outside of usual commuter hours and which is caused by the activities in one of the states by persons residing in another, from which activities such persons derive income or gain from sources within the state other than that in which they reside.

(b) The Legislature further finds and declares that whenever the aggregate number of persons residing in each of such States who are employed, or carry on trade, business, occupation or profession in the other, exceeds 100,000, that fact reasonably indicates that a critical transportation problem exists.

Statutory References

As to Legislative findings see N.J.S.A. 54:8A-5.

18:10-2.15 Certification of existence of critical transportation problem

(a) Within 40 days after this Act takes effect, and within 40 days after the first day of each year in which the Act shall remain in effect, the State Highway Commissioner shall certify to the State Treasurer his findings with respect to the existence of the conditions herein set forth and the identity of any States which he determines to come within the definition in Section 2.13 (Critical area state) of this Chapter.

(b) Upon receipt of this certification, the State Treasurer shall cause public notice thereof to be given, by publication in such newspaper or newspapers, and in such form, as he shall find will fairly apprise all persons subject to taxation under this Act, of the making of said certification and of its significance to these persons.

(c) Any certification so made shall be effective for the entire calendar year as of the first day of which it ascertains the facts.

Statutory References

As to certification of transportation problem, see N.J.S.A. 54:8A-5.

18:10-2.16 Source State defined

"Source State" means, in the case of residents of this State, a critical area state other than the State of New Jersey; and in the case of nonresidents of this State who are residents of another critical area state, the term means the State of New Jersey.

Statutory References

As to the definition of source state see N.J.S.A. 54:8A-23.

18:10-2.17 Taxpayer defined

"Taxpayer" means any person subject to a tax imposed by the Act, or whose income is in whole or in part subject to a tax imposed by the Act, and does not include corporations.

Statutory References

As to the definition of taxpayer, see N.J.S.A. 54:8A-8.

SUBCHAPTER 3. NATURE OF THE TAX AND RATES

18:10-3.1 Persons subject to tax

The New Jersey Emergency Transportation Tax Act, N.J.S.A. 54:8A, as amended and supplemented, imposes a temporary emergency tax upon every resident of this State, who is not a resident of another critical area state under and pursuant to its laws, upon and with respect to his New Jersey taxable income derived from sources within a critical area state other than New Jersey; and upon and with respect to the New Jersey taxable income derived from sources within this State by natural persons who are not residents of this State and who are residents of another critical area state under and pursuant to the law of such state.

Statutory References

As to imposition of tax see N.J.S.A. 54:8A-2.

18:10-3.2 Partners and partnerships

A partnership is not subject to the tax. Persons carrying on business as partners are subject to the tax in their separate or individual capacities.

Statutory References

As to partnerships, see N.J.S.A. 54:8A-31.

18:10-3.3 Rate of tax

The Tax imposed by the Act shall be computed at the following rates:

If the New Jersey taxable income is:

over \$ 0	but not over \$1,000	the tax is
1,000	3,000	\$ 20 PLUS 3% OF EXCESS OVER \$1,000
3,000	5,000	80 PLUS 4% OF EXCESS OVER 3,000
5,000	7,000	160 PLUS 5% OF EXCESS OVER 5,000
7,000	9,000	260 PLUS 6% OF EXCESS OVER 7,000
9,000	11,000	380 PLUS 7% OF EXCESS OVER 9,000
11,000	13,000	520 PLUS 8% OF EXCESS OVER 11,000
13,000	15,000	680 PLUS 9% OF EXCESS OVER 13,000
15,000	17,000	860 PLUS 11% OF EXCESS OVER 15,000

over 17,000	but not over 19,000	the tax is
19,000	21,000	1,060 PLUS 11% OF EXCESS OVER 17,000
21,000	23,000	1,280 PLUS 12% OF EXCESS OVER 19,000
23,000		1,520 PLUS 13% OF EXCESS OVER 21,000
		1,780 PLUS 14% OF EXCESS OVER 23,000

Statutory References

As to rate of tax, see N.J.S.A. 54:8A-6.

SUBCHAPTER 4. ACCOUNTING PERIODS AND METHODS

18:10-4.1 Accounting periods

(a) *General provisions.* The New Jersey Emergency Transportation Tax, like the Federal income tax, is computed on the basis of taxable income for each taxable year. The taxable year of every taxpayer required to make a tax return under the Emergency Transportation Tax Act, must be the same as his taxable year for Federal income tax purposes. The taxable year may be a calendar year or a fiscal year consisting of 12 consecutive months. However under certain circumstances the period may be less than 12 months. (e.g. In case of death or change of accounting period) or it may be a 52-53 week year.

(b) *Absence of Federal accounting period.* A taxpayer who is not required to file a Federal income tax return but is required to file a New Jersey Emergency Transportation Tax return shall report on the calendar year basis unless the Division of Taxation authorizes the use of a different taxable period. This rule shall not apply, however, in a case where a taxpayer had for a previous year filed a Federal income tax return and his taxable year for Federal income tax purposes for the last such year, in respect of which a Federal income tax return was filed, was other than the calendar year. Thus, if the last Federal income tax return filed by a taxpayer was on the basis of a fiscal year ending June 30, and he is not required to file a Federal income tax return for the subsequent taxable year but is required to file a New Jersey Emergency Transportation Tax return, his taxable period for New Jersey purposes for such year and thereafter shall be a fiscal year ending June 30. If a taxpayer not required to file a Federal income tax return is subsequently required to file a Federal income tax return and the taxable period for Federal purposes is different from the taxable period established for New Jersey tax purposes, his New Jersey taxable period shall be changed to conform to the Federal period.

Statutory References

As to taxable year; method of accounting, annual accounting period and payment of tax, see N.J.S.A. 54:8A-18, 29, 48.

18:10-4.2 Change of accounting periods

(a) A taxpayer may not change his taxable year unless a similar change has been made for Federal income tax purposes, except where a change is authorized by the Division of Taxation with respect to a taxpayer not required to file a Federal income tax return.

(b) If a taxpayer's taxable year is changed for Federal income tax purposes, his taxable year for purposes of the New Jersey Emergency Transportation Tax shall be similarly changed.

Statutory References

As to method of accounting, see N.J.S.A. 54:8A-48.

18:10-4.3 Method of changing accounting period

(a) If a taxpayer changes his accounting period by reason of a change in his Federal income tax accounting period, he shall file with his first New Jersey Emergency Transportation Tax return for the new accounting period either a copy of the consent of the Commissioner of Internal Revenue to change the basis of his return for Federal income tax purposes, or if no consent is required, a statement to that effect referring to the particular provision of the Internal Revenue Code or regulations authorizing the change.

(b) If a Taxpayer is not subject to Federal income tax but is subject to the New Jersey Emergency Transportation Tax, he must obtain the consent of the Division of Taxation before changing his accounting period. His request for such change must state the reasons therefor and must be made on or before the last day of the month following the close of the short period for which a return is required to effect the change of accounting period. If the Division of Taxation approves the change of accounting period, it will advise the taxpayer as to the effective date of such change and as to any short period returns required as a result thereof.

18:10-4.4 Short taxable periods resulting from a change in accounting period

(a) If a short taxable period for Federal income tax purposes results from a change in the taxpayer's accounting period, the taxpayer shall also file a New Jersey Emergency Transportation tax return for such short taxable period. His taxable income shall be computed on the basis of the period for which the return is made and in accordance with the rules applicable to the determination of New Jersey taxable income generally (see Subchapter 6 (Taxable Income) of this Chapter), except that the standard deduction (see Section 8.2 (New Jersey Standard Deduction of Nonresident Individual) of this Chapter) and exemptions (see Subchapter 9 (Personal Exemptions) of this Chapter) shall be allowed only to the following extent:

1. The amount allowed as a standard deduction shall be the lesser of either ten per cent of the New Jersey adjusted gross income for the short taxable period or that amount which bears the same ratio to \$1,000.00 as the

number of months in the short taxable period bears to 12 months;

2. The amount of allowable personal exemptions shall be reduced to the amount which bears the same ratio to the full amount for such exemptions as the number of months in such short period bears to 12 months.

Example:

An individual had been filing his Federal and New Jersey tax returns on the basis of a fiscal year ending September 30. He changes to a calendar year basis and files a Federal income tax return for the short taxable period October 1 to December 31. He is entitled to one personal exemption and elects the New Jersey standard deduction for the short taxable period. His Federal adjusted gross income for the short taxable period is as follows:

Salary	\$3,000
U.S. bond interest	40
Rental Income—New Jersey Source	60
Federal adjusted gross income	\$3,100
His New Jersey Taxable income is as follows:	
Federal adjusted gross income	\$3,100
Less modification for U.S. bond interest	40
New Jersey adjusted gross income	\$3,060
Standard deduction (the lesser of (i) 10 per cent of \$3,060, or (ii) $1,000 \times \frac{3}{12}$)	250
Personal exemption— $\$600 \times \frac{3}{12}$	150
New Jersey taxable income	\$2,660

(b) In computing the tax for a short taxable period resulting from change of accounting period, the amount allowed as a specific credit in accordance with Subchapter 5 (Credits Against Tax) of this Chapter shall be reduced to the amount which bears the same ratio to the full amount of the credit as the number of months in the period bears to 12 months.

Statutory References

As to taxable year; method of accounting, see N.J.S.A. 54:8A-48.

18:10-4.5 Accounting methods

(a) A taxpayer must employ the same method of accounting in determining his taxable income as he uses for Federal income tax purposes.

(b) The term method of accounting refers not only to the overall method of accounting (such as cash or accrual), but also to the accounting treatment of particular items of income, gain, loss or deduction, such as depreciation and research and experimental expenditures.

Statutory References

As to method of accounting, see N.J.S.A. 54:8A-48.

18:10-4.6 Absence of Federal method of accounting

(a) In the event a taxpayer does not have a Federal method of accounting he must compute taxable income on

the accounting basis regularly used in keeping his books. If this method does not clearly reflect his income, the computation of taxable income shall be made in a manner which, in the opinion of the Division of Taxation, clearly reflects his income.

(b) A method of accounting which consistently applies generally accepted accounting principles in a particular trade or business, in accordance with recognized conditions or practices, will ordinarily be regarded as clearly reflecting income, provided all items of income, gain, loss and deduction are treated consistently from year to year.

(c) A taxpayer may compute his taxable income under any method of accounting which is permissible for Federal income tax purposes; e.g., cash, accrual, installment or long-term contract basis, or any combination which clearly reflects income. (See Section 446 of the Internal Revenue Code and its applicable regulations.)

Statutory References

As to method of accounting, see N.J.S.A. 54:8A-48.

18:10-4.7 Change of accounting methods

(a) A taxpayer may not change his method of accounting for New Jersey tax purposes unless a similar change has been made for Federal income tax purposes, except where a taxpayer does not have a Federal method of accounting.

(b) If a taxpayer's method of accounting is changed for Federal income tax purposes, his method of accounting for New Jersey tax purposes shall be similarly changed without application by him to the Division of Taxation, but a copy of the consent of the Commissioner of Internal Revenue to the change must be annexed to the taxpayer's first return filed under the new method, together with the statement required pursuant to Section 4.8 (Change other than from accrual to installment method of accounting) of this Chapter.

(c) Where a taxpayer does not have a Federal method of accounting, an application for permission to change a method of accounting shall be made within 90 days after the beginning of the taxable period to which the proposed change will relate. Such application shall be accompanied by a statement specifying:

1. The nature of the taxpayer's business;
2. His present method of accounting;
3. The method to which he desires to change;
4. The taxable year in which the change is to be effected;
5. The classes of items to receive different treatment under the new system; and
6. All items which would be duplicated or omitted as a result of the proposed change.

(d) If such taxpayer later adopts a federal method of accounting and such method differs from his method under the New Jersey Emergency Transportation Tax, the taxpayer must conform his New Jersey method of accounting to the Federal.

Statutory References

As to taxable year; method of accounting, see N.J.S.A. 54:8A-48.

18:10-4.8 Change other than from accrual to installment method of accounting

If a taxpayer's method of accounting is changed, other than from an accrual to an installment method, there shall be taken into account in computing taxable income for the taxable year of the change those adjustments pertaining to inventories, accounts receivable, accounts payable, and other items, which are determined to be necessary to prevent amounts from being duplicated or omitted. If the change has occurred by reason of a change in his Federal method of accounting, adjustments will generally be reflected in his Federal adjusted gross income and therefore in his New Jersey adjusted gross income for the year of the change. The year of the change is the taxable year for which the taxable income of the taxpayer is computed under a method of accounting different from that used for the preceding year.

Statutory References

As to method of accounting, see N.J.S.A. 54:8A-48.

18:10-4.9 Adjustments necessitated by change other than from accrual to installment method of accounting

(a) The adjustments necessitated by reason of such change in accounting method may result in an amount of tax for the year of the change in excess of the tax which would have been determined had there not been a change in the method of accounting.

(b) In this event, the additional tax shall not be greater than if such adjustments were ratably allocated and included for the taxable year of the change and the preceding taxable years, not in excess of two, during which the taxpayer used the method of accounting from which the change was made.

Statutory References

As to method of accounting, see N.J.S.A. 54:8A-48.

18:10-4.10 Verification of adjustments

(a) The taxpayer shall submit a statement with his tax return for the year of the change, setting forth the following information and calculations:

1. Each adjustment necessitated by the change;

2. The net amount of the adjustments. This means the consolidation of the adjustments (whether the amounts thereof represent increases or decreases in items of income or deductions) arising with respect to balances in various accounts at the beginning of the taxable year of the change. Where the change in the method of accounting occurs by reason of a Federal change, this net amount shall be the same for New Jersey tax purposes as it is for Federal income tax purposes, except to the extent of any modifications described in Subchapter 7 of this Chapter (Adjusted Gross Income) and in Sections 8.3 through 8.9 of this Chapter pertaining to such adjustments;

3. The New Jersey tax for the taxable year of the change with the net amount of adjustments included in the computation of taxable income;

4. The New Jersey tax for the taxable year of the change computed as if the net amount of the adjustments were not included in the computation of taxable income;

5. The additional New Jersey tax, if any, incurred solely by reason of the net amount of adjustments included in taxable income, computed by subtracting paragraph 4 of this subsection from paragraph 3 of this subsection;

6. The allocation of the net amount of adjustments (paragraph 2 of this subsection) to the taxable year of the change and the preceding taxable year or years, not in excess of two, during which the taxpayer used the method of accounting from which the change is made. The amount to be allocated to each year is determined by dividing the net amount of adjustments into as many equal parts as there are taxable years involved (either two taxable years or three taxable years, including the taxable year of the change);

7. The New Jersey taxable income for the year of the change and for the preceding year or two years, as the case may be, computed both

- i. Without any amount of the net adjustments; and
- ii. With the addition of the appropriate share of the net adjustments as determined under paragraph 6 of this subsection;

8. The additional New Jersey tax which would result for each of the above taxable years by the addition to the New Jersey taxable income in each year of the appropriate share of the net adjustments;

9. The total amount of the additional tax for the years involved;

(b) If the amount described in paragraph 9 of subsection (a) of this Section exceeds the amount described in paragraph 5 of subsection (a) of this Section, the taxpayer shall compute his New Jersey tax for the year of the change without a ratable allocation of the net adjustments to any preceding year or years. If the amount described in said paragraph 5 exceeds the amount described in paragraph 9 hereof, the amount of the excess shall be subtracted from

the tax for the year of the change as determined under paragraph 3 of subsection (a) of this Section. The resulting sum is the amount of tax due for the taxable year of the change.

Example:

Assume that a taxpayer, entitled to one personal exemption, used the cash method in 1961 and 1962. In 1963 he changes to the accrual basis and has taxable income of \$10,000 figured on the accrual basis. His books at the beginning of 1963 included the following accounts: accounts receivable \$10,000; accounts payable \$8,000; inventory \$5,000. The amount of tax due for the taxable year of the change is computed in the following manner:

Subject to the amount of any modifications required under these regulations, the taxable income for the year of the change, including the net amount of adjustments (see paragraphs 1 and 2 of subsection (a) of this Section), would be \$17,000, computed as follows:

Taxable income on accrual basis (new method but before adjustments)	\$10,000
1. Adjustments:	
Add: Items not previously reported as income:	
Accounts receivable 1/1/63	\$10,000
Items previously deducted but constituting marketable business assets:	
Inventory 1/1/63	\$5,000
Total to be added	\$15,000
Subtract: Items not previously deducted:	
Accounts payable 1/1/63	\$8,000
2. Net amount of adjustments (increase)	\$7,000
Taxable income after adjustments	\$17,000

The net additional tax for the year of the change described in paragraph 5 of subsection (a) of this Section is computed as follows:

3. Tax due, after specific credit, on taxable income for the year of change including the net amount of adjustments (\$17,000)	\$1,050
4. Tax due, after specific credit, on taxable income for the taxable year of change above adjustments (\$10,000)	\$440
5. Net additional tax due	\$610

Since the taxpayer used the cash method for the two years preceding the change-over year and the adjustments for 1963 increased taxable income by \$7,000, the taxpayer may reduce the tax on the increase by allocating \$2,333 to 1961, \$2,333 to 1962, and \$2,334 to 1963 (see paragraphs 6 through 8 of subsection (a) of this Section). The net tax due for the year of change is then computed in the following manner:

Taxable year	Taxable income before adjustments	Taxable income after adjustments	Tax before adjustments	Tax after adjustments	Increase in tax due to adjustments
1961	\$ 6,000	\$ 8,333	\$200	\$330	\$130
1962	6,500	8,833	225	360	135
1963	10,000	12,334	440	626	186
Total increase in tax attributable to adjustment					\$ 451
Net additional tax determined at item 5.					\$ 610
Excess					\$ 169
Total tax determined at item 3.					\$1,050
Excess shown above					\$ 169
Net tax due for year of change					\$ 891

Statutory References

As to taxable year; method of accounting, see N.J.S.A. 54:8A-48.

18:10-4.11 Change from accrual to installment method of accounting

If a taxpayer has changed his method of accounting from an accrual to an installment method for Federal income tax purposes, any installment payments actually received in the year of change or in subsequent taxable years (such year or years being referred to as "adjustment years"), on account of sales or other disposition of property made in any taxable year prior to the year of the change, are required to be included in Federal adjustment gross income and consequently are included in New Jersey adjusted gross income. Therefore, profits attributable to installment sales which were taxed in the year of sale because the taxpayer was then on the accrual method of accounting would also be taxed in the adjustment years (that is, during the years the installments are actually received after the change to the installment method of accounting). To avoid such duplication of tax, any additional tax for the adjustment years, attributable to the receipt of installment payments properly accrued in a prior year shall be reduced by an amount equal to the portion of tax for any year or years preceding the year of change attributable to the prior accrual of income from installment sales included in gross income in the adjustment years.

Statutory References

As to method of accounting, see N.J.S.A. 54:8A-48.

18:10-4.12 Reduction in tax for adjustment year

To give effect to the foregoing, the tax for an adjustment year shall be reduced by the lower of the following amounts:

(a) That proportion of the tax for the prior year (in which the installment sales were reported on the accrual basis) which the amount of installment sales gross profits reportable in the prior year of sale and in the adjustment year bears to the New Jersey adjusted gross income (or New Jersey gross income or capital gain as the case may be) for the prior year of sale.

(b) The excess, if any, of the amount of the tax for the adjustment year on the entire New Jersey taxable income over the amount of tax for such year computed without regard to the amount of the installment sales gross profits reported in both the prior year of accrual and in the adjustment year.

(c) Where previously reported installments received in an adjustment year include installments on sales made in more than one prior year the reduction allowable with respect to the installments for each prior year shall be computed separately. In this case the excess tax calculated under subsection (b) of this Section computed with respect to the installments from all prior years shall be prorated over the several prior years in proportion to the amount of the duplicated installment sales profits attributable to each prior year.

Example:

The computation of the reduction of tax for adjustment years is illustrated by the following example:

	Year 1 accrual basis	Year 2 adjustment year	Year 3 adjustment year
Gross profit from installment sales receivable in five installments	\$10,000	\$2,000 from year 1 sales 3,000 (From year 2 sales)	\$2,000 from year 1 sales 3,000 (from year 2 sales) 5,000 (from year 3 sales)
Other gross income	\$8,000	\$15,000	\$11,000
Total gross income	\$18,000	\$20,000	\$21,000
Allowable deductions and exemptions	\$6,000	\$5,000	\$18,000
Taxable income	\$12,000	\$15,000	\$3,000
Tax	\$600	\$860	\$80

Computation of adjustment—year 2.

Tax attributable to year 1 installment payments in year 2 (first adjustment year), the year in which the change was made from the accrual basis to the installment basis:

Tax on taxable income including gross profit from year 1 sales	\$860
Tax on taxable income excluding such gross profit:	
Taxable income, as above	\$15,000
Less gross profit from year 1 sales accrued in prior year	2,000
Revised taxable income	\$13,000
Tax on revised taxable income	680
Additional tax attributable to prior year installment payments	\$180
Tax attributable to prior inclusion in year 1:	
$\$2,000/\$18,000 \times \$600 = \66.67	

Therefore, the tax for year 2 (first adjustment year) may be reduced by \$66.67, the lesser of the two amounts computed above.

Computation of adjustment—year 3.

Tax attributable to year 1 installment payments in year 3 (second adjustment year):

Tax on taxable income including gross profit from year 1 sales	\$80
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Tax on taxable income excluding such gross profit:	
Taxable income, as above	\$3,000
Less gross profit from year 1 sales accrued in a prior year	2,000
Revised taxable income	\$1,000
Tax on revised taxable income	20
Additional tax attributable to prior year installment payments	\$60
Tax attributable to prior inclusion in year 1:	
$\$2,000/\$18,000 \times \$600 = \66.67	

Therefore, the tax for year 3 (second adjustment year) may be reduced by \$60, the lesser of the two amounts computed above.

Statutory References

As to reduction in tax, see N.J.S.A. 54:24-48.

18:10-4.13 Change by a partnership from accrual to installment method of accounting

(a) In the case of a change by a partnership from the accrual method of accounting to the installment method, partnership income includes for each adjustment year any installment payments actually received in the year even though such amounts were included in partnership income for prior years under the accrual method. Each partner shall determine separately his distributive share of profits attributable to installment payments included in partnership income in the year of sale and in any adjustment year, and shall compute his tax reduction in accordance with the provisions of this Section.

(b) A taxpayer who changes from the accrual method to the installment method under this Subchapter shall attach a statement to his income tax return for each adjustment year. This statement must show:

1. The pertinent facts as to sales in each year preceding the year of change;
2. The number of remaining taxable years over which it will be necessary to compute adjustments;
3. A schedule showing the computation as prescribed in this regulation of the adjustment for the taxable year.

Statutory References

As to change of method of accounting, see N.J.S.A. 54:8A-48.

SUBCHAPTER 5. CREDITS AGAINST TAX

18:10-5.1 Specific credit for individuals

(a) The following credits shall be allowed to all individuals against the tax computed under Section 3.3 of this Chapter (Rate of tax) for each taxable year.

1. A credit of \$10.00 for an individual who is not married and is not the head of a household and is not a surviving spouse;

2. A credit of \$25.00 for husband and wife, provided that if their taxes are separately computed (whether or not on a single form), the credit allowable to each shall be \$12.50;

3. A credit of \$25.00 for the head of a household, or for a surviving spouse.

(b) In the case of a husband and wife filing separate New Jersey returns for the taxable year, whether or not on a single form, no portion of either the husband's or wife's specific credit (\$12.50) may be used by the other spouse.

Statutory References

As to maximum credits against tax, see N.J.S.A. 54:8A-15.

18:10-5.2 Marital or other status

(a) A taxpayer's marital or other status under this Subchapter shall be the same as his marital, head of household or surviving spouse status for the purpose of establishing the applicable Federal income tax rates.

(b) Where a husband and wife are not qualified to file a joint return for Federal income tax purposes, due to their marital status at the close of the taxable year, the credit referred to in paragraph 2. of subsection (a) of Section 5.1 (Specific Credit) of this Chapter above shall not apply, but the applicable credits shall be determined under paragraphs 1 and 3 of Subsection (a) of Section 5.1 of this Chapter.

18:10-5.3 Federal credits against tax not allowable for New Jersey purposes

For Federal income tax purposes, certain credits against the tax are allowed, such as the foreign tax credit and the retirement income credit. However, such Federal credits against the tax are not allowable for New Jersey tax purposes.

18:10-5.4 Nonresident tax credit; conditions

(a) A nonresident of this State shall be allowed a credit against the tax otherwise due under the Act for any income tax imposed for the taxable year by another critical area State, of which the taxpayer is a resident but such credit shall not exceed either:

1. The percentage of the other tax determined by dividing the portion of the taxpayer's income subject to taxation under the Act which is also subject to the other tax by the total amount of his income subject to such other tax; or

2. The percentage of the tax otherwise due under the Act, determined by dividing the portion of the taxpayer's income subject to taxation under the Act which is also subject to the other tax by the total amount of the taxpayer's income which is taxable under the Act.

(b) No credit shall be allowed under this Section unless the jurisdiction of which the taxpayer is a resident:

1. Grants a substantially similar credit to residents of this State; or
2. Imposes an income tax on its own residents with respect to income derived from this State, and exempts from income tax the income of residents of this State.

Statutory References

As to nonresident tax credit, see N.J.S.A. 54:8A-16.

18:10-5.5 Tax credit allowed residents

(a) A resident of this State shall be allowed a credit against the tax otherwise due under the Act for any income tax imposed for the taxable year by another critical area State, upon income both derived therefrom and subject to the tax under the Act.

(b) The credit allowable under this Section shall not exceed the percentage otherwise due under the Act determined by dividing the portion of the taxpayer's income subject to taxation by such other jurisdiction by the total amount of the taxpayer's income subject to taxation under the Act.

(c) The credit allowable under this Section shall not reduce the tax otherwise due under the Act to an amount less than would have been due if the income subject to taxation by such other jurisdiction were excluded from the taxpayer's income subject to tax under the Act.

(d) No credit shall be allowed under this Section for a tax of a jurisdiction which allows residents of this State a credit against the taxes imposed by such other jurisdiction for the tax under the Act, if the other credit is substantially similar to the credit granted to nonresident taxpayers by Section 5.4 (Non resident tax credit) of this Chapter.

Statutory References

As to Resident tax credit, see N.J.S.A. 54:8A-16.

Case Notes

Taxpayer resident in New Jersey and employed in New York held liable for the emergency transportation tax but without obligation to pay or to file a return for such tax if the amount of the tax paid to New York equals or exceeds his liability for that New Jersey tax. *Jenkins v. Taxation Div. Director*, 4 N.J.Tax 127, 184 N.J.Super. 402, 446 A.2d 217 (Tax.Ct.1982).

SUBCHAPTER 6. TAXABLE INCOME

18:10-6.1 New Jersey taxable income of nonresident individual

(a) The New Jersey taxable income of a nonresident individual in his New Jersey adjusted gross income (see Subchapter 7 (Adjusted Gross Income) of this Chapter) less his New Jersey standard or itemized deduction and his personal exemptions (see Subchapter 8 (Deductions) and 9 (Personal Exemptions) of this Chapter).

(b) His New Jersey taxable income is subject to tax at the rates prescribed in Section 3.3 (Rate of tax) of this Chapter.

Statutory References

As to computation of net and gross income, see N.J.S.A. 54:8A-35, 54:8A-36.

18:10-6.2 New Jersey taxable income of husband and wife

(a) Where a husband and wife both are nonresidents and they compute their Federal taxable income separately on separate Federal returns for a particular year, they must also file separate New Jersey returns and compute their New Jersey taxable income separately for such a year on form NJTT-203 (see Section 11.8 (a) (Returns of husband and wife) of this Chapter).

(b) Where a husband and wife both are nonresidents and they compute their Federal taxable income on a joint Federal return, or if neither files a Federal return they may either:

1. Compute their New Jersey taxable income jointly on a joint State return (form NJTT-203); or
2. Compute their New Jersey taxable income separately on a combined State return (form NJTT-209). (See Section 11.8 (b) (Returns of husband and wife) of this Chapter).

Statutory References

As to persons required to file, see N.J.S.A. 54:8A-44.

SUBCHAPTER 7. ADJUSTED GROSS INCOME

18:10-7.1 New Jersey adjusted gross income of a nonresident individual

(a) *Items included in New Jersey adjusted gross income.* The New Jersey adjusted gross income of a nonresident individual includes all items of income, gain, loss and deduction which enter into his Federal adjusted gross income limited, however, to the portion of these items derived from or connected with New Jersey sources as determined under Sections 7.2 through 7.9 of this Chapter.

(b) *In addition to the items realized directly by him, it includes:*

1. His distributive shares of partnership income, gain, loss and deduction (see Subchapter 10 (Partners) of this Chapter; and
2. His share of estate or trust income, gain, loss and deduction.

Example:

A, a nonresident, receives during 1968 the following items of income:

- 1. Income from salary as a corporated officer paid in New Jersey by check on a New Jersey bank for 1968, 20 per cent of A's working days were properly considered days worked outside New Jersey; \$10,000
- 2. Distributive share of income from a partnership carrying on business as a manufacturer's representative both within and without New Jersey. Seventy per cent of the income of the partnership was properly allocable to New Jersey; \$35,000
- 3. Net rental income from an apartment house located in New York; \$3,000
- 4. A's share as beneficiary under a trust under the will of A's father, who died a resident of New Jersey. Income of the trust consists of:
 - Net rentals from medical office building located in New Jersey \$4,000
 - Dividends from Stock of a New Jersey corporation \$6,000
 - A's share as 50 per cent beneficiary \$5,000

(c) The net amount of A's items of income and gain entering into his Federal adjusted gross income derived from or connected with New Jersey sources is determined as follows:

- 1. Salary (determined on the basis of days worked in and out of New Jersey and not by where payment was made) (see Section 7.25 (Earnings of nonresident employees and officers) of this Chapter for applicable allocation rules); \$8,000
- 2. Partnership income (determined on the basis of the partnership's 70 per cent allocation) (see Subchapter 10 (Partners) of this Chapter for applicable allocation rules); \$24,500
- 3. Income from New York apartment house (entirely excluded) (see Section 7.4 (Items attributable to real or tangible personal property) of this Chapter); -0-
- 4. Income from trust (limited to A's 50 per cent share of New Jersey rental income). \$2,000
- Total \$34,500

Cross References

N.J.S.A. 54:8A-32, 33, 35, 36.

18:10-7.2 Modifications of Federal adjusted gross income

The following modifications of Federal adjusted gross income are required to be made by an individual in determining his New Jersey adjusted gross income.

(a) Add to such amount the following types of income and gain derived from the sources of income and gain listed below:

- 1. Interest income from the obligations of any state or political subdivision thereof except where, by the

laws of such state, its own taxpayers are exempted from taxation with respect to such interest income;

2. Interest or dividend income from the obligations or securities of any authority, commission or instrumentality of the United States, which the laws of the United States exempt from Federal income taxation, but not from state income taxation;

3. Amounts deductible with respect to income taxes imposed by this State or any other taxing jurisdiction in determining Federal adjusted gross income unless these amounts are credited against Federal income tax; and

4. Amounts deductible with respect to interest on indebtedness which is incurred or continued in order to purchase or retain securities or obligations the income from which is exempt from tax under the Act.

(b) Subtract from such net amount the following types of income and gain derived from the sources of income and gain listed below:

1. Interest income from obligations of the United States and its possessions to the extent that such interest is includible in gross income for Federal income tax purposes;

2. Interest or dividend income from the obligations or securities of any authority, commission or instrumentality of the United States, to the extent that such amounts of income are includible in gross income for Federal income tax purposes, and exempt from state income taxation under the laws of the United States;

3. Interest or dividend income from obligations or securities to the extent that such income is exempted from taxation by the laws of this State authorizing the issuance of the underlying obligations and securities and includible in gross income for Federal income tax purposes;

4. Pensions or retirement allowances to the extent included in gross income for Federal income tax purposes;

5. The portions of any gain included in gross income derived from the sale or other disposition of property which had a higher basis for New Jersey tax purposes than for Federal income tax purposes, which does not exceed such difference in basis. However, if the gain is considered a long-term capital gain for Federal income tax purposes, the subtraction is limited to 50 per cent of such portion of the gain.

Example:

If your total income includes a gain of \$5,000 from the sale of real estate located in New Jersey which had a basis of \$10,000 for New Jersey tax purposes and a basis of \$8,000 for Federal income tax purposes, the amount to be subtracted is \$2,000 (the portion of the \$5,000 gain which does not exceed the difference in

basis). However, if such gain is considered a long-term capital gain for Federal tax purposes, the amount to be subtracted is \$1,000 (50% of the computed amount);

6. The amount of any refund or credit for overpayment of income taxes imposed by this State, or any other taxing jurisdiction, to the extent that such refund is includible in gross income for Federal income tax purposes.

Example (1):

In 1968, A, a resident of New York earned a salary of \$25,000 entirely in New Jersey. In addition, A sold for \$100,000 a small apartment building in New Jersey which he had constructed for investment in 1963 at a cost of \$100,000. He had elected the sum-of-the-years digits method of depreciation for Federal income tax purposes but had been required to use straight line depreciation for New Jersey tax purposes. Consequently, his Federal basis for the property on December 31, 1967 was \$80,000 and his New Jersey basis was \$90,000. A also realized a long-term loss of \$30,000 from the sale through a New Jersey broker of securities listed on the New York Stock Exchange. For Federal income tax purposes, A reports a net long-term capital loss of \$10,000, of which \$1,000 may be deducted from ordinary income. Assuming no other material facts, A's Federal adjusted gross income is \$24,000 (\$25,000 salary less \$1,000 capital loss).

A's New Jersey adjusted gross income is determined as follows:

Salary	\$25,000
Fifty per cent of long-term capital gain on sale of apartment house	10,000
Modification reflection 50 per cent of the difference between A's Federal basis (\$80,000) and N.J. basis (\$90,000) of the property on December 31, 1967	\$5,000
A's New Jersey adjusted gross income	\$30,000

The loss from the sale of securities is disregarded because it is not connected with New Jersey sources.

Example (2):

B, a nonresident, is a partner in a partnership engaged in the securities business as a broker and dealer holding all of its securities for sale to customers in the ordinary course of business and not as investments. All of its business is carried on in New Jersey. B's distributive share of partnership income for 1968 includes the following items of income and deduction:

Interest income on obligation of states other than New Jersey	\$2,000
Interest on indebtedness incurred by the partnership to carry U.S. Government bonds	\$100
Interest on U.S. Government bonds	\$1,000

Since the partnership carries on its business entirely in New Jersey, all of the foregoing items are derived from or connected with New Jersey sources. Accordingly, the following modifications are made in determining B's New Jersey adjusted gross income:

Modifications increasing Federal adjusted gross income:	
Interest income on obligations of states other than New Jersey	\$2,000
Interest on indebtedness incurred to carry U.S. Government bonds	100
Modification reducing Federal adjusted gross income	\$2,100
Interest on U.S. Government bonds	\$1,000

Statutory References

As to computation of income, see N.J.S.A. 54:8A-32, 33, 35, 36.

18:10-7.3 Income and deduction from New Jersey sources

(a) A nonresident individual's items of income, gain, loss and deduction derived from or connected with New Jersey sources are the items attributable to:

1. The ownership of any interest in real or tangible personal property in this State; or
2. A business, trade, profession or occupation carried on in this State.

(b) The determination as to whether items of income, gain, loss and deduction are derived from or connected with New Jersey sources is made in accordance with Section 7.4 and 7.5 of this Chapter.

Statutory References

As to income derived from taxpayer's source state, see N.J.S.A. 54:8A-33.

18:10-7.4 Items attributable to real or tangible personal property in this State

(a) The New Jersey adjusted gross income of a nonresident individual includes items of income, gain, loss and deduction entering into his Federal adjusted gross income which are attributable to the ownership of any interest in real or tangible personal property in this State. Thus, New Jersey adjusted gross income includes rental income from real or tangible personal property in this State or any interest therein after deducting ordinary and necessary expenses attributable to the ownership, operation or maintenance of such property.

(b) The New Jersey adjusted gross income of a nonresident individual does not include items of income, gain, loss and deduction attributable to the ownership of any interest in real or tangible personal property located outside of this State, even though rental payments in respect of the property may be made from a point within the State.

Statutory References

As to computation of income, see N.J.S.A. 54:8A-35, 36.

Case Notes

Non-New Jersey losses cannot be used to offset the New Jersey income of non-residents under the Emergency Transportation Tax Act; Supreme Court decision holding emergency transportation tax unconstitutional granted only prospective relief. *Riehm v. Director, Div. of Taxation*, 7 N.J.Tax 88 (Tax Ct.1984), affirmed 8 N.J.Tax 312 (App.Div. 1986).

18:10-7.5 Business, trade, profession or occupation carried on in this State

(a) The New Jersey adjusted gross income of a nonresident individual includes items of income, gain, loss and deduction entering into his Federal adjusted gross income which are attributable to a business, trade, profession or occupation carried on in this State.

(b) A business, trade, profession or occupation (as distinguished from personal services as an employee) is carried on within the State by a nonresident when he occupies, has, maintains or operates desk room, an office, a shop, a store, a warehouse, a factory, an agency or other place where his affairs are systematically and regularly carried on, notwithstanding the occasional consummation of isolated transactions without the State. This definition is not exclusive. Business is carried on within the State if activities are conducted in this State with a fair measure of permanency and continuity. A taxpayer may enter into transactions for profit within the State and yet not be engaged in a trade or business within the State. If a taxpayer pursues an undertaking continuously as one relying on the profit therefrom for all or part of his income, he is carrying on a business or occupation. But see Section 7.14 (Purchase and sale for own account) of this Chapter in regard to the effect of the purchase and sale of property of a nonresident for his own account.

Statutory References

As to computation of Gross Income, see N.J.S.A. 54:8A-32, 36.

18:10-7.6 Compensation for personal services as an employee

(a) The New Jersey adjusted gross income of a nonresident individual rendering personal services as an employee includes the compensation for personal services entering into his Federal adjusted gross income, but only if, and to the extent that, his services were rendered within this State.

(b) Compensation for personal services rendered by a nonresident individual wholly without the State is not included in his New Jersey adjusted gross income, regardless of the fact that payment may be made from a point within the State or that the employer is a resident individual, partnership or corporation.

(c) Where the personal services are performed within and without New Jersey, the portion of the compensation attributable to the services performed within New Jersey shall be determined in accordance with Sections 7.24, 7.25, 7.26 of this Chapter.

Statutory References

As to computation of gross income, see N.J.S.A. 54:8A-32, 36.

18:10-7.7 Compensation for personal services performed within this State

If personal services are performed within New Jersey, whether or not as an employee, the compensation for such services includible in Federal adjusted gross income constitutes income from New Jersey sources regardless of the fact that:

1. Such compensation is received in a taxable year after the year in which the services were performed; or
2. Such compensation is received by someone other than the person who performed the services.

Statutory References

As to computation of gross income of taxpayer, see N.J.S.A. 54:8A-32, 36.

18:10-7.8 Pension or other retirement benefits constituting an annuity

(a) General provisions. Where an individual formerly employed in New Jersey is retired from service and thereafter receives a pension or other retirement benefit attributable to his former services, the pension or retirement benefit is not taxable if the individual receiving it is a nonresident and if it constitutes an annuity as defined in subsection (b) of this Section. Where a pension or other retirement benefit does not constitute an annuity, it is compensation for personal services and if the individual receiving it is a nonresident it is taxable to the extent that the services were performed in New Jersey. For allocation rules, see Section 7.29 (Pensions and other retirement benefits) of this Chapter.

(b) Definition. To qualify as an annuity, a pension or other retirement benefit must meet the following requirements:

1. It must be paid in money only, not in securities of the employer or other property;
2. It must be payable at regular intervals at least annually, for the life of the individual receiving it, or over a period not less than half his life expectancy, as of the date payments begin. An individual's life expectancy shall be the expected return multiple shown for the applicable age and sex in the table entitled "TABLE 1.—ORDINARY LIFE ANNUITIES—ONE LIFE EXPECTED RETURN MULTIPLES" promulgated under

Regulation 1.72-9 of the Federal Income Tax Regulations;

3. It must be payable at a rate which remains uniform during such life or period or at a rate which varies only with fluctuation in:

- i. The market value of the assets from which such benefits are payable; or
- ii. A specified and general recognized cost-of-living index;

4. The individual's right to receive it must be evidenced by a written instrument executed by his employer, or by a plan established and maintained by the employer in the form of a definite written program communicated to his employees;

5. In the case of a pension or other similar benefit paid to a nonresident beneficiary or a deceased employee:

i. Where the employee died after retirement, if the pension or other retirement benefit he was receiving constituted an annuity, payments to his beneficiary, even though they do not meet the requirements of paragraphs 1., 2., 3., of this subsection shall constitute an annuity;

ii. If the employee died before retirement, the pension or other benefit payable to his beneficiary need not be payable for the life of the beneficiary or for a period measured by his or her life expectancy, provided that it is payable pursuant to a plan established and maintained by the employer before the employee's death, under which a pension or benefit meeting the requirements set forth in paragraphs 1., 2., 3., and 4. of this subsection would have been payable to the employee upon his retirement. For the purposes of this paragraph, the employee's life expectancy shall be determined as of the date of his death if he was then eligible for retirement under the terms of the plan, or otherwise as of the earliest date when he would have become eligible for retirement under the plan.

(c) Prizes, awards and similar payments are derived from or connected with New Jersey sources as long as they are incidental to the nonresident's presence or other activities in New Jersey.

Statutory References

As to computation of gross income, see N.J.S.A. 54:8A-32, 36.

18:10-7.9 Income from intangible personal property

Items of income, gain, loss and deduction attributable to intangible personal property of a nonresident individual, including annuities, dividends, interest, and gains and losses from the disposition of intangible personal property, do not constitute items of income, gain, loss and deduction derived from or connected with New Jersey sources, except to the extent attributable to property employed in a business, trade, profession or occupation carried on in this State.

Example:

A, a resident of New York, owns 100 per cent of the stock of X corporation, which operates a store in New Jersey. In 1968, the corporation pays A a salary of \$10,000, all of which was earned in New Jersey and a dividend of \$2,000. A's income from New Jersey sources is his salary of \$10,000, since the dividend is not income derived from New Jersey sources.

Statutory References

As to income from Intangible Personal Property, see N.J.S.A. 54:8A-33.

18:10-7.10 Deductions with respect to capital losses, net long-term capital gains and net operating losses

(a) The deductions entering into the Federal adjusted gross income of a nonresident individual with respect to:

1. Capital losses;
2. 50 per cent of the excess of the net long-term capital gains over net short-term capital losses; and
3. Net operating losses are included in his New Jersey adjusted gross income only to the extent that such deductions entered into his Federal adjusted gross income and are based on items of income, gain, loss and deduction derived from or connected with New Jersey sources.

Statutory References

As to net capital gain or loss, see N.J.S.A. 54:8A-39.

18:10-7.11 Computation of deduction

The amount of any deduction under Section 7.10 of this Chapter shall be computed as it would be computed for Federal income tax purposes if the New Jersey items of income, gain, loss and deduction were the only items making up the corresponding Federal deductions for the particular year.

Statutory References

As to computation of deduction, see N.J.S.A. 54:8A-39.

18:10-7.12 Effect of computed deduction

Any other deduction computed under Section 7.10 of this Chapter shall have no effect, by way of carry-back or carry-over or otherwise, upon the computation of New Jersey adjusted gross income for any other year, except to the extent that a carry-back, carry-over or other adjustment based upon the same items enters into the taxpayer's Federal adjusted gross income for such other year.

Example:

A nonresident taxpayer has capital gains of \$10,000 from sources without New Jersey and capital losses of \$5,000 from sources within New Jersey. For Federal income tax purposes, he has a net capital gain of \$5,000. However, for New Jersey tax purposes the nonresident taxpayer has a net capital loss of \$5,000, which is subject to \$1,000 Federal net capital loss limitation. The unused \$4,000 New Jersey net capital loss (\$5,000 - \$1,000) cannot be carried over to a following year since it is not deductible as a net capital loss carryover is computing Federal adjusted gross income, the starting point in the computation of the New Jersey adjusted gross income of a taxpayer.

Statutory References

As to computed deduction, see N.J.S.A. 54:8A-39.

18:10-7.13 Undistributed taxable income and net operating loss of an electing small business corporation

For a nonresident individual who is a shareholder of a corporation which is an electing small business corporation for Federal income tax purposes:

(a) Undistributed taxable income of the corporation shall not constitute income or gain derived from New Jersey sources; and

(b) A net operating loss of the corporation shall not constitute a loss or deduction derived from or connected with New Jersey sources.

18:10-7.14 Purchase and sale for own account

A nonresident individual, other than a dealer holding property primarily for sale to customers in the ordinary course of his trade or business, is not deemed to be carrying on a business, trade, profession or occupation in this State solely by reason of the purchase and sale of property for his own account. However, a nonresident is subject to tax upon items of income and gain attributable to the ownership of real or tangible personal property in this State. See Section 7.4 (Items attributable to real or tangible personal property) of this Chapter.

Statutory References

N.J.S.A. 54:8A-4.

18:10-7.15 Military pay

(a) Compensation paid for service in the Armed Forces of the United States, performed during an induction period by an individual not domiciled in this State, does not constitute income derived from New Jersey sources.

(b) If an individual not domiciled in this State is a member of the Armed Forces of the United States during an induction period, such compensation received by him does not constitute income derived from New Jersey sources

even though the service is performed in whole or in part within this State.

(c) The meaning of the term induction period shall be the same as its meaning under Federal law.

Statutory References

N.J.S.A. 54:8A-33.

18:10-7.16 Income and deductions partly from New Jersey sources

Since the New Jersey adjusted gross income of a nonresident individual takes into account only items of income, gain, loss and deduction derived from or connected with New Jersey sources, an apportionment and allocation of items of income, gain, loss and deduction is required when a nonresident individual, or a partnership in which a nonresident individual is a member, carries on a business, trade, profession or occupation partly within and partly without the State.

18:10-7.17 Business carried on wholly within the State

(a) A business, trade, profession or occupation (as distinguished from personal services as an employee) is carried on by a nonresident wholly within this State when the activities described in subsection (b) of Section 7.5 of this Chapter are carried on solely within this State and no such activities are carried on outside of this State, even though the nonresident or his representative travels outside of the State for purposes of buying, selling, financing or performing any duties in connection with the business, and even though sales may be made to, or services performed for, or on behalf of, persons or corporations located outside of the State.

(b) If a nonresident individual carries on a business, trade, profession or occupation wholly within this State all of his items of income, gain, loss and deduction attributable to the business are derived from or connected with New Jersey sources.

18:10-7.18 Business carried on partly within and partly without State

A business, trade, profession or occupation (as distinguished from personal services as an employee) is carried on partly within and partly without this State when one or more of the activities described in subsection (b) of Section 7.5 of this Chapter systematically and regularly carried on within this State and one or more of such activities is systematically and regularly carried on outside of this State, or when one or more of such activities is systematically and regularly carried on both within and without this State.

18:10-7.19 Apportionment and allocation of income from a business carried on partly within and partly without the State

If a nonresident individual, or a partnership of which a nonresident individual is a member, carries on a business, trade, profession or occupation both within and without the State, the items of income, gain, loss and deduction attributable to such business, trade, profession or occupation must be apportioned and allocated to this State on a fair and equitable basis in accordance with approved methods of accounting.

18:10-7.20 Returns of taxpayer satisfactorily disclosing proportion of net amount of items

If the books of any business provided for in Section 7.19 (Apportion and allocation) of this Chapter, are so kept as regularly to disclose to the satisfaction of the Division of Taxation the proportion of the net amount of the items of income, gain, loss and deduction derived from or connected with New Jersey sources, the return of the taxpayer shall disclose the total amount of such items, the net amount of such items allocated to New Jersey and the basis upon which such allocation is made.

18:10-7.21 Determination of tax where proportion of net amount of items unsatisfactorily disclosed

If the books and records of any business provided for in Section 7.19 (Apportion and allocation) of this Chapter do not disclose to the satisfaction of the Division of Taxation the proportion of the net amount of the items of income, gain, loss and deduction attributable to the activities of the business carried on in New Jersey such proportion shall, except as provided in Section 7.23 (Rentals and gains from the sale or exchange of real property) of this Chapter be determined by multiplying the net amount of the income, gain, loss and deduction of the business by the average of the following percentages:

(a) Property percentage.

1. General. The percentage computed by dividing

i. The average of the values, at the beginning and end of the taxable year, of real and tangible personal property connected with the business and located within this State, by

ii. The average of the values, at the beginning and end of the taxable year, of all real and tangible personal property connected with the business and located both within and without this State. For this purpose, real property shall include real property rented to the taxpayer and used in the business. Real property, the income or gain from which is allocated pursuant to Section 7.23 (Rentals and gains) of this Chapter, shall be disregarded in computing the property percentage described in this paragraph;

2. Rented real property.

i. The fair market value of real property, both within and without New Jersey, which is rented to the taxpayer shall be determined by multiplying the gross rents payable during the taxable year by eight;

ii. Gross rent as used in this clause is the actual sum of money or other consideration payable directly or indirectly by the taxpayer or for its benefit for the use or possession of the property and includes:

(A). Any amount payable for the use or possession of real property, or any part thereof, whether designated as a fixed sum of money or as a percentage of sales, profits or otherwise;

(B). Any amount payable as additional rent or in lieu of rent, such as interest, taxes, insurance, repairs or any other amount required to be paid by the terms of a lease or other arrangement;

(C). A proportionate part of the cost of any improvement to real property made by or on behalf of the taxpayer which reverts to the owner or lessor upon termination of a lease or other arrangement, based on the unexpired term of the lease commencing with the date the improvement is completed (or the life of the improvement if its life expectancy is less than the expired term of the lease), provided, however, that where a building is erected on leased land by or on behalf of the taxpayer, the value of the land is determined by multiplying the gross rent by eight, and the value of the building is determined in the same manner as if owned by the taxpayer. The proportionate part of the cost of an improvement (other than a building on leased land) is generally equal to the amount of amortization allowed in computing New Jersey adjusted gross income, whether the lease does or does not contain an option of renewal;

iii. Gross rents do not include:

(A). Any portion of a payment or credit to the proprietor of the business or to a partner in the partnership conducting the business for the use of real property;

(B). Amounts payable as separate charges for water and electric service furnished by the lessor;

(C). Amounts payable for storage where no designated space under the control of the taxpayer as a tenant is rented for storage purposes;

(D). That portion of any rental payment which, in the discretion of the Division of Taxation, is applicable to property subleased by the taxpayer and not used by him or it in the carrying on of the business.

(b) Payroll percentage. The percentage computed by dividing

1. The total wages, salaries and other personal service compensation paid or incurred during the taxable year to this State; by

2. The total of all wages, salaries and other personal service compensation paid or incurred during the taxable year to employees in connection with the business carried on both within and without this State.

(c) Gross income percentage. The percentage computed by dividing

1. The gross sales or charges for services performed by or through an office, branch or agency of the business located within this State; by

2. The total of all gross sales or charges for services performed within and without this State. The sales or charges to be allocated to this State shall include all sales negotiated or consummated, and charges for services performed, by an employee, agent, agency or independent contractor chiefly situated at, connected by contract or otherwise with, or sent out from, offices, branches of the business or other agencies, situated within this State.

18:10-7.22 Result if general outline is inaccurate or not equitable in valuations

(a) If the general method outlined herein results in valuations which are inaccurate or which are not fair and equitable, any other method which will fairly and equitably reflect the value may be adopted by the Division of Taxation either on its own motion or on request of the taxpayer. A request by a taxpayer for an alternative method may be made at the time of the filing of the return to which it relates by using the proposed method in the return provided the method is fully explained in the return. Any request should contain:

1. All facts with respect to the property forming the basis for the proposed valuation;

2. A computation of the value of the rented real property based on gross rents in accordance with Section 7.21(a)2 of this Chapter. This basis or other method once approved by the Division of Taxation may be used without specific approval for subsequent years until the facts upon which it is based are materially changed.

18:10-7.23 Rentals and gains from the sale or exchange of real property

Income from and deductions connected with the rental of real property, and gain and loss from the sale, exchange or other disposition of real property are not subject to allocation under Section 7.19 (Apportionment and allocation) of this Chapter, but are considered as entirely derived from or connected with the state in which such real property is located.

18:10-7.24 Earnings of salesmen

If the commissions for sales made or other compensation for services performed by a nonresident traveling salesman, agent or other employee depends directly upon the volume

of business transacted by him, his items of income, gain, loss and deduction (other than deductions entering into the New Jersey itemized deduction) derived from or connected with New Jersey sources include that proportion of the net amount of such items attributable to such business which the volume of business transacted by him within the State of New Jersey bears to the total volume of business transacted by him within and without the State. (See Sections 8.3 through 8.7 of this Chapter with respect to deductions which constitute the New Jersey itemized deductions.)

18:10-7.25 Earnings of nonresident employees and officers

(a) If a nonresident employee (including corporate officers but excluding employees provided for in Section 7.24 (Earnings of salesmen) of this Chapter) performs services for his employer both within and without the State, his income derived from New Jersey sources includes that proportion of his total compensation for services rendered as an employee which the total number of working days employed within the State bears to the total number of working days employed both within and without the State.

(b) The items of gain, loss and deduction (other than deductions entering into the New Jersey itemized deductions) of the employee attributable to his employment, derived from or connected with New Jersey sources, are similarly determined. However, any allowance claimed for days worked outside of the State must be based upon the performance of services which of necessity, as distinguished from convenience, obligate the employee to out-of-state duties in the service of his employer.

(c) In making the allocation provided for in this Section, no account is taken of nonworking days, including Saturdays, Sundays, holidays, days of absence because of illness or personal injury, vacation, or leave with or without pay. (See Section 8.3 through 8.7 of this Chapter, with respect to deductions which constitute the New Jersey itemized deduction.)

Example:

A, a resident of New York, is an officer and substantial stockholder of the X corporation, having its principal office in New Jersey. In 1968, A performs the following services for X corporation:

Services performed for X corporation wholly within New Jersey.	210 days
Sales conventions in Hot Springs, Arkansas and Miami, Florida. A passed through New Jersey to board airplanes on four of these days.	15 days
Calling on customers in Pacific Coast States.	20 days

A's salary from the X corporation is \$40,000 per year. A's New Jersey adjusted gross income is determined as follows:

Total number of working days within New Jersey (210) divided by total number of working days both within and without New Jersey (245) equals 85.7 per cent, which, when applied against A's salary of \$40,000 equals \$34,280, A's New Jersey adjusted gross income.

Days on which A entered New Jersey solely for the purpose of boarding or disembarking from an airplane or train do not count as days worked in New Jersey.

18:10-7.26 Wages of nonresident seamen; items derived from New Jersey sources

(a) The income derived from New Jersey sources of a nonresident seaman includes the full amount of compensation received by him for services rendered as an employee on a vessel operating exclusively within the State of New Jersey.

(b) His items of gain, loss and deduction derived from or connected with New Jersey sources include all of such items attributable to such employment.

18:10-7.27 Items not included which are derived from New Jersey sources of a nonresident seaman

(a) The items of income, gain, loss and deduction of a nonresident seaman derived from or connected with New Jersey sources do not include any such items attributable to employment on a ship which is operating exclusively between ports of this State and foreign ports, or ports of other states, even though at times the ship touches at a port within this State and remains there a reasonable time for the transaction of its business.

(b) The presence within the State of a seaman aboard a ship which enters a New Jersey port for the purpose of foreign or interstate trade is merely transitory and the items of income, gain, loss and deduction of a nonresident seaman during that period in respect to his employment aboard the ship do not constitute items derived from or connected with New Jersey sources.

18:10-7.28 Items derived from employment on a ship operating in port of New York

(a) The items of income, gain, loss and deduction of a nonresident seaman employed on a vessel operating between the States of New Jersey and New York within the port of New York are partly derived from or connected with New Jersey sources and partly derived from or connected with sources without the State.

(b) For the purposes of these regulations, $\frac{1}{2}$ of each of such items as is considered to be derived from or connected with New Jersey sources (See Sections 8.3 through 8.7 of this Chapter with respect to deductions which constitute the New Jersey itemized deduction.)

18:10-7.29 Pensions and other retirement benefits

(a) *Amount includible in adjusted gross income.*

1. If a pension or other retirement benefit does not qualify as an annuity under Section 7.8 of this Chapter and is attributable to services performed wholly in New Jersey, the entire amount included in the individual's Federal adjusted gross income is likewise includible in his New Jersey adjusted gross income;

2. If the pension or other retirement benefit is attributable to services performed wholly outside New Jersey, no part of the amount received is includible in the individual's New Jersey adjusted gross income;

3. Where the employee's services were performed partly within and partly without New Jersey, the amount includible in the individual's New Jersey adjusted gross income shall be the proportion of the amount included in the individual's Federal adjusted gross income which the total compensation received from the employer for the services performed in New Jersey during a period consisting of the portion of the taxable year prior to retirement and the three taxable years immediately preceding the retirement bears to the total compensation received from the employer during such period for services performed both within and without New Jersey.

(b) For the purposes of subsection (a) of this Section, the compensation for services performed in New Jersey shall be determined separately for each taxable year or portion of a year in accordance with the applicable provisions of Sections 7.24 through 7.28 of this Chapter. A determination of the portion of a pension or other form of deferred compensation attributable to New Jersey on the basis of a period of time greater than the period referred to above may be made if the individual establishes, to the satisfaction of the Division of Taxation, the amount of his total yearly compensation for a longer period of time and the amount allocable to New Jersey in each year in accordance with the applicable provisions of Sections 7.24 through 7.28 of this Chapter. (For taxability of pensions and other retirement benefits, in general, see Section 7.8 of this Chapter).

Example:

A, a nonresident of New Jersey performs services in and out of the State for a corporate employer under an employment contract whereby for each year's services he is to receive a salary of \$40,000 during the period of employment and an additional \$100,000 payable in ten equal annual installments commencing after his employment terminates. A terminates his employment on July 1, 1964, when he is 50 years of age and his life expectancy is 25.5 years (see Section 7.8 (General provisions) of this Chapter). Since the payments are not to run for at least one-half of A's life expectancy, they do not qualify as an annuity. Assuming that the New Jersey percentage for allocating his salary were 50% for 1961, 60% for 1962, 75% for 1963 and 40% for the first half of 1964, the portion of additional payments to be included in New Jersey income would be computed as follows:

	Total Compensation	New Jersey Portion	
1961	\$ 40,000	(50%)	\$20,000
1962	40,000	(60%)	24,000
1963	40,000	(75%)	30,000
1964 (6 months)	20,000	(40%)	8,000
Totals	\$140,000		\$82,000

$\$82,000/\$140,000 \times \$10,000 = \$5,857.14$ includible as received annually in New Jersey adjusted gross income.

18:10-7.30 Commissions received by security and commodity brokers

If a security or commodity broker does business both within and without the State of New Jersey as determined under Section 7.17 (Business wholly within State) of this Chapter, commissions derived from the execution or purchase or sales orders for the account of customers are allocated and apportioned as follows:

(a) *Order originating from broker located outside New Jersey.* If the order received at the New Jersey place of business for execution on a New Jersey exchange originates at a bona fide established office of the broker located outside the State, 40 per cent of the commission in the case of stocks and 50 per cent of the commission in the case of bonds and commodities is allocated to New Jersey and constitutes income derived from or connected with New Jersey sources.

(b) *Orders originating from broker located in New Jersey.* If the order originates at the New Jersey place of business and is transmitted to a bona fide established office of the broker for execution on an exchange located in another state, 60 per cent of the commission in the case of stocks and 50 per cent of the commission in the case of bonds and commodities is allocated to New Jersey and constitutes income derived from or connected with New Jersey sources.

18:10-7.31 Income from vessels

Charter money or freight or passage payments received by a nonresident owner or lessee with respect to a vessel which is operated exclusively between ports of this State and foreign ports or ports of other states do not constitute income derived from or connected with New Jersey sources if the individual receiving the income maintains no regular agency in this State and is not carrying on business in this State, as determined under Sections 7.16 (Income partly from New Jersey) and 7.17 (Business wholly within State) of this Chapter.

18:10-7.32 Other methods of allocation

(a) Sections 7.18 through 7.31 of this Chapter are designed to apportion and allocate to this State, in a fair and equitable manner, a nonresident's items of income, gain, loss and deduction attributable to a business, trade, profession or occupation carried on partly within and partly without this State. Where the methods provided under those regulations do not so allocate and apportion those items, the Division of Taxation may require a taxpayer to apportion and allocate those items under the method as it shall prescribe as long as the prescribed method results in a fair and equitable apportionment and allocation.

(b) A nonresident individual may submit an alternative method of apportionment and allocation with respect to items of income, gain, loss and deduction attributable to a business, trade, profession or occupation carried on partly

within and partly without the State. The proposed method should be fully explained in the taxpayer's return.

(c) If the method proposed by the taxpayer is approved by the Division of Taxation, it may be used in lieu of the applicable method under Sections 7.18 through 7.31 of this Chapter.

18:10-7.33 New Jersey adjusted gross income of a husband and wife

Where a husband and wife determine their Federal income tax for a particular year on a joint return but determine their New Jersey taxes separately, they are then required to compute their New Jersey adjusted gross income separately; that is, in the same manner as if the Federal adjusted gross income of each spouse had been determined on separate Federal returns filed by them. Several of the various special situations arising from these different methods of filing returns under the two laws are discussed in the following Sections.

Statutory References

As to persons required to file, see N.J.S.A. 54:8A-44.

18:10-7.34 Additional first-year depreciation on Federal returns

(a) Under the Internal Revenue Code, additional first year depreciation at the rate of 20 per cent may be claimed on the cost of certain tangible personal property. This additional Federal allowance applies to the extent of 20 per cent of \$10,000.00 of cost, or \$2,000.00, if the owner of the property filed a separate Federal return; or to the extent of 20 per cent of \$20,000.00 of cost, or \$4,000.00, if the owner and his or her spouse filed a joint Federal return.

(b) Subsection (b) of Section 44 of the Act provides that a husband and wife who file a joint Federal return and separate New Jersey returns must determine their separate New Jersey adjusted gross income as if their Federal adjusted gross incomes had been determined separately. It therefore follows that the allowance of this additional first-year depreciation is limited to 20 per cent of \$10,000.00 on the separate return of the owner. No depreciation with respect to the assets involved may be claimed on the separate return of the other spouse unless such spouse would have been entitled to this deduction on his or her separate Federal return. The New Jersey adjusted gross income on the returns filed for subsequent years by the taxpayer owning the property will, however, reflect a deduction for depreciation in the same amount as allowable on his Federal tax returns for such subsequent years (unless an adjustment is necessary for additional first-year depreciation in connection with new assets acquired).

Example:

On January 2, 1968, Mr. Jones purchased a machine for use in his business, having an estimated useful life of ten years and costing \$30,000. He elected to claim first-year and straight line depreciation for Federal income tax purposes.

The following computations illustrate the depreciation allowable on joint or separate 1968 Federal income tax returns:

	Joint return	Separate return
Cost	\$30,000	\$30,000
First-year depreciation (maximum)	\$ 4,000	\$ 2,000
Remaining cost	\$26,000	\$28,000
Straight line depreciation on remaining cost	\$ 2,600	\$ 2,800
Total depreciation	\$ 6,600	\$ 4,800

If Mr. Jones and his wife file a joint 1968 Federal income tax return but separate 1968 New Jersey returns, the depreciation allowable on his separate State return is \$4,800, determined in the same manner as if he had filed a separate Federal return for 1968.

For years subsequent to 1968, assuming the depreciation status of his machine remains unchanged, Mr. Jones is entitled to claim on his separate State returns the exact amount of depreciation allowable for Federal tax purposes, which would be \$2,600 annually since he had filed a joint 1968 Federal return.

When the machine is sold by the taxpayer, it will have the same basis for New Jersey tax purposes as for Federal tax purposes. No adjustment or modification may be made to recover any portion of the deduction for first-year depreciation which may have been lost for State purposes due to the filing of a joint Federal return but separate State returns.

18:10-7.35 Net operating loss carry-over

(a) A net operating loss carry-back or carry-over results in a recomputation of Federal adjusted gross income for the prior or succeeding years. It therefore is reflected in New Jersey adjusted gross income for the year involved.

(b) Where the husband and wife file separate New Jersey returns, the benefit of the net operating loss carry-back or carry-over may be claimed only by the spouse who sustained the loss.

18:10-7.36 Income from jointly owned property

A husband and wife who file a joint Federal return and separate New Jersey returns (using form NJTT-209) must each report his or her share of income jointly owned real estate, stocks, bonds, bank accounts and other property, in the same manner as if their Federal adjusted gross incomes had been determined separately. The rules for determining the manner of reporting this income depend upon the nature of the ownership interests and, in general may be summarized as follows:

(a) *Joint tenants.* A husband and wife owning property as joint tenants with the right of survivorship, a common example of which is a joint bank account, should each report one-half of the income from the property when separate returns are filed.

(b) *Tenants by the entirety.* A husband and wife should each report on separate returns one-half of the income from real estate held by them as tenants by the entirety.

(c) *Tenants in common.* Income from property held by husband and wife as tenants in common is reportable by them in proportion to their legal ownership interests in the property, which will generally be equivalent to their ratable contributions to the investment in such property.

Statutory References

As to persons required to file, see N.J.S.A. 54:8A-44.

18:10-7.37 Capital loss carry-over

(a) If a joint Federal return is filed but the husband and wife elect to file separate New Jersey returns, the capital loss carry-over allowable on the separate State return of each spouse is limited to the amount of capital loss carry-over which would be allowable if a separate Federal return had been filed for the year involved.

Example:

H and W file a joint Federal return for 1968, including therein H's capital gains of \$10,000 and W's capital losses of \$9,000. On the joint Federal return, a net capital gain of \$1,000 would be reportable and there would be no capital loss carry-over from 1968 to 1969. On their separate 1968 State returns, H would include his capital gains of \$10,000 in his separate New Jersey adjusted gross income while W would be limited to \$1,000 loss in computing her separate New Jersey adjusted gross income.

W does not get the benefit of an \$8,000 capital loss carry-over on her 1969 New Jersey return since she cannot claim it on her 1969 Federal return, regardless of whether W and H file jointly or separately for 1969.

(b) The New Jersey capital loss carry-over of either spouse is determined solely by the amount that would be allowable for Federal tax purposes if separate Federal returns had been filed.

Statutory References

As to persons required to file, see N.J.S.A. 54:8A-44.

SUBCHAPTER 8. DEDUCTIONS

18:10-8.1 New Jersey deduction of a nonresident individual

(a) After computing the New Jersey adjusted gross income of a nonresident individual (see Subchapter 7 (Adjusted Gross Income) of this Chapter), there are subtracted:

1. Either the New Jersey standard deduction or the New Jersey itemized deduction; and
2. His personal exemptions (see Subchapter 9) of this Chapter, and the resulting balance is his New Jersey taxable income.

(b) A nonresident individual must take the New Jersey standard deduction (see Section 8.2 (Standard deduction of non-resident) of this Chapter), unless he has itemized deductions on his Federal return for the taxable year. In the latter situation, he may claim either the New Jersey standard deduction or the New Jersey itemized deduction (see Sections 8.3 through 8.7 of this Chapter).

18:10-8.2 New Jersey standard deduction of a nonresident individual

(a) *General Provisions.* A nonresident individual may use the New Jersey standard deduction on his state return, regardless of whether he used the standard deduction or claimed itemized deduction for the same year on his Federal return. The New Jersey standard deduction of a nonresident individual is ten per cent of his New Jersey adjusted gross income or \$1,000, whichever is less.

(b) *Husband and wife.*

1. Where husband and wife compute their New Jersey income on a joint return, there is only one New Jersey adjusted gross income, and their New Jersey standard deduction is ten per cent of such New Jersey adjusted gross income or \$1,000 whichever is less;

2. If husband and wife file separate New Jersey returns, both must use the New Jersey standard deduction unless they both elect to take New Jersey itemized deductions;

3. Where husband and wife file separate New Jersey returns, regardless of whether on Forms NJTT-230 or NJTT-209, the total of their New Jersey standard deduction cannot exceed ten percent of the total of their New Jersey adjusted gross income of \$1,000, whichever is less. In these cases, the total amount allowable may be taken by either the husband or the wife or may be divided between them as they may elect.

Statutory References

As to standard deduction, see N.J.S.A. 54:8A-9.

18:10-8.3 New Jersey itemized deduction of a nonresident individual

(a) A nonresident individual may elect to use itemized deductions in computing his New Jersey taxable income only if he claimed itemized deductions for the same year in his Federal return.

(b) The New Jersey itemized deduction of a nonresident individual means the total amount of his deductions from Federal adjusted gross income, other than Federal deductions for personal exemptions, as provided in the laws of the United States for the taxable year, with the modifications specified in Sections 8.5 and 8.6 of this Chapter.

(c) The New Jersey itemized deductions include such items as contributions, interest, taxes and medical expenses listed under "Itemized Deductions" in the Federal return. It does not include any item deducted in computing the amount of Federal adjusted gross income, for example, business expenses deducted in computing profit or loss from a business or profession, or depreciation or repairs deducted in computing rental income.

(d) Federal itemized deductions for contributions and medical expenses are limited by a percentage of Federal adjusted gross income. The New Jersey Emergency Transportation Tax Act does not provide for any modification of these items. Therefore, the amount of the Federal itemized deductions for these items is carried over into the New Jersey itemized deduction without change.

Statutory References

As to computation of net and gross income and additional deductions, see N.J.S.A. 54:8A-35, 54:8A-36, 54:8A-37.

18:10-8.4 New Jersey itemized deduction for nonresident husband and wife

(a) A husband or wife may claim the New Jersey itemized deduction only if:

1. Both claimed itemized deductions in their Federal returns for the same year; and
2. Both elect to use the New Jersey itemized deduction.

(b) If either spouse is required to use, or elects to use the New Jersey standard deduction, the other spouse must also use it.

(c) If a husband and wife file separate Federal returns for any year, they must also file separate New Jersey returns on form NJTT-203 (see Subchapter 11 (Returns and liabilities) of this Chapter), and in this case the New Jersey itemized deduction for each spouse is based upon the itemized deductions in his or her separate Federal return.

(d) Where a husband and wife who are both nonresidents file a joint Federal return and claim itemized deductions, but determine their New Jersey taxable incomes separately on a single form (form NJTT-209), the New Jersey itemized deduction which may be claimed is their total Federal itemized deduction, subject to the modifications described in Sections 8.5 and 8.6 of this Chapter and the limitations described in subsection (b) of Sections 8.6 and 8.7 of this Chapter. The New Jersey itemized deduction may be taken by either spouse or divided between them in any way they may elect. Where a husband and wife file separate Federal returns and separate State returns, such optional division of the New Jersey itemized deduction is not permitted.

(e) The right of a husband and wife to compute their New Jersey itemized deduction in the manner provided for in subsection (c) and (d) of this Section, by starting with Federal itemized deductions, subject to the applicable modifications and limitations referred to in those Sections is effective for taxable years commencing on or after January 1, 1961.

Statutory References

As to computation of net and gross income and additional deductions, see N.J.S.A. 54:8A-35, 54:8A-36, 54:8A-37.

18:10-8.5 Modifications reducing Federal itemized deductions

The total amount of itemized deductions from Federal adjusted gross income is to be reduced by the amount of the Federal deductions for:

(a) Income taxes imposed by this or any other State or by any other taxing authority. This modification eliminates from Federal itemized deductions the amount of any income taxes included therein, regardless of the identity of the taxing jurisdiction, as the New Jersey Emergency Transportation Tax does not allow the deduction of income taxes.

(b) Interest on indebtedness incurred or continued to purchase or carry obligations or securities, the income from which is exempt from New Jersey tax.

Example:

Where a taxpayer borrows money to purchase new U.S. Treasury certificates, the interest income from the certificates is subject to the Federal tax and interest paid on the purchasing loan is an allowable itemized Federal deduction. For New Jersey tax purposes, the United States interest income is exempt and the related interest expense is not allowable as a deduction. Therefore, the United States interest income is subtracted from Federal adjusted gross income in computing New Jersey adjusted gross income, by the modification under Section 7.2 (Modifications of Federal adjusted gross income) of this Chapter, and the interest expense is subtracted from Federal itemized deductions in computing the New Jersey itemized deduction.

(c) Ordinary and necessary expenses paid or incurred during the taxable year for:

1. The production or collection of income which is exempt from New Jersey tax; or
2. The management, conservation or maintenance of property held for the production of such income and the amortizable bond premium for the taxable year on any bond the interest on which is exempt from New Jersey tax.

Example:

Where a taxpayer who holds United States bonds, the interest on which is fully taxable for Federal income tax purposes, incurs expenses in connection with the collection of the interest income, the interest income is includible in his Federal adjusted gross income and the expenses of collecting the interest are allowable itemized Federal deductions. For New Jersey tax purposes the United States interest income is exempt and the related collection expenses are not allowable as deductions. Therefore, the United States interest income is subtracted from Federal adjusted gross income in computing New Jersey adjusted gross income by the modification under Section 7.2 (Modifications of Federal adjusted gross income) of this Chapter, and the collection expenses are subtracted from Federal itemized deductions in computing the New Jersey itemized deduction. If the taxpayer in the foregoing example had purchased the United States bonds at a premium and had elected to amortize the premium for Federal income tax purposes the amount of the premium amortized or written off for the taxable year would also be subtracted from the Federal itemized deduction in computing the New Jersey itemized deduction. For allocation of expenses to different classes of income, see Section 7.2 (Modifications of Federal adjusted gross income) of this Chapter.

Statutory References

As to additional deductions, see N.J.S.A. 54:8A-37.

18:10-8.6 Modifications increasing Federal itemized deductions

(a) The total amount of Federal itemized deductions is to be increased for premiums paid during the year with respect to any life insurance or endowment policy upon the life of the taxpayer, in an amount not exceeding \$150.00. The modification does not cover premiums paid for insurance on the life of a spouse, a dependent, or any individual other than the taxpayer. However, on a joint return, the modification applies to premiums paid up to \$150.00, for insurance on the life of each spouse. Any amount of life insurance or endowment premiums paid on the life of a taxpayer in excess of \$150.00 cannot be claimed by another taxpayer.

Example:

A husband and wife file a joint return for a taxable year during which the husband spent \$200 as premiums for insurance on his own life and the wife spent \$100 for insurance on her life. The modification on the joint return increasing the amount of Federal itemized deductions is \$250, of which \$150 is attributable to the husband and \$100 to the wife.

(b) Interest on indebtedness incurred or continued to purchase or carry obligations or securities the income from which is subject to New Jersey tax but exempt from Federal income tax, to the extent that such interest is not deductible for Federal income tax purposes and has not been subtracted from Federal adjusted gross income as interest expense attributable to a trade or business carried on by the taxpayer pursuant to Section 7.2 (Modifications of Federal adjusted gross income) of this Chapter.

Example:

A taxpayer, not engaged in business, borrows \$100,000 from his bank to purchase bonds issued by the State of California. In computing his Federal taxable income the interest on the bonds is not includible in Federal gross income and the interest on the bank loan is not allowable as an itemized Federal deduction. However, the interest received on the bonds is subject to New Jersey tax and is added to Federal adjusted gross income in computing the taxpayer's New Jersey adjusted gross income; Section 7.2 (Modifications of Federal adjusted gross income) of this Chapter. To give effect to the present subsection the interest of the bank loan incurred to purchase the bonds must be added to the Federal itemized deductions in computing the New Jersey itemized deductions.

(c) Ordinary and necessary expenses paid or incurred during the taxable year for:

1. The production or collection of income which is subject to New Jersey tax but exempt from Federal income tax; or

2. The management, conservation or maintenance of property held for the production of such income, and the amortizable bond premium for the taxable year on any bond the interest on which is subject to New Jersey tax but exempt from Federal income tax to the extent that such premiums are not deductible for Federal income tax purposes and are not subtracted from Federal adjusted gross income as expenses attributable to a trade or business carried on by the taxpayer. For example, if the taxpayer in the example in subsection (b) of this Section incurs ordinary and necessary expenses in connection with the collection of the interest on the California bonds and is required to amortize a premium paid on such bonds, the amounts of such expenses and premiums which are not allowable for Federal income tax purposes must be added to the Federal itemized deductions in computing the New Jersey itemized deductions. For allocation of expenses to different classes of income see Section 7.2 (Modifications of Federal adjusted gross income) of this Chapter.

Statutory References

As to additional deductions, see 54:8A-37.

18:10-8.7 Computation of allowable deductions

(a) Any taxpayer who elects to take the itemized deductions allowed in Sections 8.3, 8.4, 8.5, 8.6 of this Chapter shall be permitted to take the full amount of the deduction except that if;

1. His New Jersey adjusted gross income, as defined in Section 7.1 (Adjusted gross income of nonresidents) of this Chapter is exceeded by;

2. His Federal adjusted gross income, determined by applying the modifications in Section 7.2 (Modifications of Federal adjusted gross income) of this Chapter, by more than \$100 his itemized deductions allowed in Sections 8.3, 8.4, 8.5, 8.6 of this Chapter shall be limited by the percentage which paragraph 1 is of paragraph 2.

(b) The manner for determining a taxpayer's adjusted gross income is provided by Sections 7.1 (Adjusted gross income of nonresidents) 7.2 (Modifications of Federal adjusted gross income) of this Chapter. This regulation shall authorize the use of Federal adjusted gross income for this purpose.

Example (1):

X, a resident of New York, has the following items entering into his Federal adjusted gross income for 1968:

Salary-all earned in New Jersey	\$5,000
Dividends on stock in New Jersey corporation (after subtracting dividend exclusion)	40
Interest on United States Government bonds	200
Interest from a New Jersey savings bank	60
Federal adjusted gross income	\$5,300
X also had Federal itemized deductions in the following amounts:	
Real estate taxes on residence	\$300
New Jersey Emergency Transportation Tax	100
Interest on mortgage on residence	200
Charitable contributions to New York charities	200
Unreimbursed employee expenses for Union dues	100
Federal itemized deductions	900

In addition, X has paid premiums on \$150 on his life insurance.

i. X's New Jersey adjusted gross income as a non-resident is \$5,000, since the interest and dividend income does not constitute income derived from New Jersey sources (See Section 7.9 (Income from intangibles) of this Chapter).

ii. X's Federal adjusted gross income (see paragraph 2. of subsection (a) of this Section.) is \$5,100; since the \$200 of the United States Government bond interest is subtracted from Federal adjusted gross income as a modification, (Section 7.2 (Modifications of Federal adjusted gross income) of this Chapter).

As X's New Jersey adjusted gross income does not exceed his Federal adjusted gross income (see paragraph 2. of subsection (a) of this Section) by more than \$100, his New Jersey itemized deduction is the same:

Federal itemized deductions	\$900
Subtract: NJETT	(\$100)
Add: Life insurance premiums	150
New Jersey itemized deduction (See Sections 8.3, 8.4, 8.5 and 8.6 of this Chapter).	\$950

Example (2):

Y, a resident of New York, had the following items entering into his Federal adjusted gross income for 1968:

Salary (90 per cent of Y's working days were in New Jersey)	\$40,000
Interest on United States Government bonds	1,000
Capital gain on sale of securities	3,000
Federal adjusted gross income	\$44,000

In addition, Y received \$2,000 interest on bonds of the State of New York in 1968.

i. Y's New Jersey adjusted gross income is \$36,000 (90 per cent of \$40,000).

ii. Y's Federal adjusted gross income (see paragraph 2. of subsection (a) of this Section) would include the full amount of the \$40,000 in salary and the \$2,000 of New York bond interest, but would not include the \$1,000 of United States Government bond interest. It would also include the \$3,000 capital gain on sale of securities. Accordingly, Y's Federal adjusted gross income, determined with modifications in Section 7.2 (Modifications of Federal adjusted gross income) of this Chapter, would be \$45,000.

Since Y's New Jersey adjusted gross income is exceeded by his Federal adjusted gross income determined with modifications in Section 7.2 (Modifications of Federal adjusted gross income) of this Chapter, by more than \$100, Y's New Jersey itemized deduction is limited to \$36,000/\$45,000, or 80 per cent, of his adjusted itemized deduction (see Sections 8.3, 8.4, 8.5, 8.6 of this Chapter).

Y's Federal itemized deductions amount to \$4,800. The New Jersey modification attributable thereto under subsection (a) of Section 8.5 (Modifications reducing deductions) of this Chapter is \$2,500 for New Jersey Emergency Transportation Tax. Therefore, Y's New Jersey itemized deduction is computed as follows:

Federal itemized deductions	\$4,800
Less: NJET taxes	2,500
	\$2,300

The New Jersey itemized deduction which Y may claim is limited to 80 per cent X \$2,300, or \$1,840.

Statutory References

As to additional deductions, see N.J.S.A. 54:8A-37.

18:10-8.8 Computation of deduction of husband and wife

Where a nonresident and wife determine their Federal taxable income on a joint return but determine their New Jersey taxable incomes separately on form NJTT-209, the limitation under Section 8.7 (Computation of allowable deduction) of this Chapter, with respect to the computation of the New Jersey itemized deduction is determined by reference to:

1. The total of their New Jersey adjusted gross incomes determined as nonresidents under Section 7.33 (Adjusted gross income of husband; wife) of this Chapter; and

2. The joint Federal adjusted gross income with modifications in Section 7.2 (Modifications of Federal adjusted gross income) of this Chapter, they would be required to report on their joint New Jersey return.

Example (1):

H and W are nonresident husband and wife. They file a joint Federal income tax return and separate New Jersey returns on a single form (form NJTT-209). Their joint Federal adjusted gross income includes the following:

H's salary, entirely allocable to New Jersey	\$10,000
W's income from dividends	5,000
Total	\$15,000

Their Federal itemized deductions are the following:

Charitable contributions	\$1,000
Interest and taxes on residence	1,000
Medical expenses	1,000
Total	\$3,000

Their New Jersey itemized deduction is determined as follows:

H's New Jersey adjusted gross income separately determined	\$10,000
W's New Jersey adjusted gross income separately determined	-0-
(1) Total	\$10,000
(2) H and W's joint Federal adjusted gross income	\$15,000
Limitation on New Jersey itemized deduction	
(1) $\$10,000 / (2) \$15,000 = 66\frac{2}{3}$ per cent	
New Jersey itemized deduction = $66\frac{2}{3}$ per cent \times \$3,000 or \$2,000.	

The limitation on the New Jersey itemized deduction set forth above applies even though:

- i. H reports all of his separate income to New Jersey;
- ii. All the items deducted are actually paid of H's New Jersey salary; and
- iii. W has no income or deductions derived from or connected with New Jersey sources.

Example (2):

The facts are the same as in the first example, except H and W file a joint New Jersey tax return on form NJTT-203. Their New Jersey itemized deduction will be determined as follows:

1. Joint New Jersey adjusted gross income as nonresidents; \$10,000
 2. Joint Federal adjusted gross income; \$15,000
- Limitations on New Jersey itemized deduction
1. \$10,000/2. \$15,000 = 66⅔ per cent
- New Jersey itemized deduction = 66⅔ per cent × \$3,000 or \$2,000.

Statutory References

As to additional deductions, see N.J.S.A. 54:8A-37.

18:10-8.9 Alternate computation

(a) The taxpayer may deduct from his adjusted gross income in lieu of his standard deduction:

1. Deductions for charitable contributions are provided for Federal income tax purposes but limited to his source state or to any political subdivision thereof, or to any corporation, trust, community chest, fund, foundation or other entity organized or operated under the laws of his source state;

2. Deductions for alimony or separate maintenance payments includible in the adjusted gross income of a recipient subject to tax under this Act;

3. Deductions for losses of real or tangible personal property having an actual situs in his source state, arising from fire, storm, shipwreck or other casualty, or from theft, shall be allowed only to the extent that the amount of loss of an individual arising from each casualty, or from each theft, exceeds \$100.00. For purposes of the \$100.00 limitation, a husband and wife making a joint return for the taxable year in which the loss is allowed as a deduction shall be treated as one individual;

4. Deductions, with respect to real or tangible personal property having an actual situs in his source state, for losses (other than capital losses) incurred in any transaction entered into for profit but not connected with the taxpayer's trade or business.

(b) In addition to the deductions authorized in subsection (a) of this Section, any taxpayer shall be allowed the deductions authorized in Sections 8.3 through 8.6 of this Chapter to the same extent that such deductions are allowed to New Jersey residents who are subject to the income tax laws of a critical area state other than New Jersey. To the extent that any deduction authorized in Sections 8.3 through 8.6 of this Chapter has been taken by a taxpayer to compute his Federal adjusted gross income such deductions shall not be allowed to a taxpayer computing his adjusted gross income in accordance with the provisions of Subchapter 7 (Adjusted gross income) of this Chapter.

Statutory References

As to computation of net income and additional deductions, see N.J.S.A. 54:8A-35, 37.

SUBCHAPTER 9. PERSONAL EXEMPTIONS

18:10-9.1 New Jersey personal exemptions of a nonresident individual

(a) *General Provisions.* A nonresident individual is allowed the same personal exemptions for State tax purposes as for Federal purposes. Therefore he is allowed one New Jersey exemption of \$600 for each exemption properly allowable to him for the taxable year for Federal income tax purposes.

(b) *Husband and wife.* Where a husband and wife file a joint Federal return and also a joint State return, the same personal exemptions are allowed on the joint State nonresident return as on the joint Federal return. Likewise, where a husband and wife file separate Federal returns, the same personal exemptions are allowed on the separate State nonresident returns of each spouse as on the respective separate Federal returns. If, however, a husband and wife file a joint Federal return but file separate State returns on form NJTT-209, each spouse shall be entitled to a New Jersey exemption of \$600 for each exemption properly allowable to him or her determined as if both spouses had filed separate Federal returns.

SUBCHAPTER 10. PARTNERS

18:10-10.1 Partnership income and deductions of a nonresident partner derived from New Jersey sources

(a) The New Jersey adjusted gross income of a nonresident partner shall include his distributive share of all items of partnership income, gain, loss and deduction entering into his Federal adjusted gross income to the extent such items are derived from or connected with New Jersey sources, for example, attributable to the ownership of any interest in real or intangible personal property in this State or to a business, trade, profession or occupation carried on in this State as determined under Sections 7.4, 7.5(b), 7.16 through 7.23, 7.30, 7.31, and 10.2 of this Chapter. As to modifications applicable in determining a nonresident partner's distributive share of partnership items entering into his Federal adjusted gross income, see Section 10.3 (Modification of partnership items) of this Chapter.

(b) Where a nonresident partner elects to use itemized deductions in determining his New Jersey taxable income, there shall be attributable to him his distributive share of partnership items of deduction from Federal adjusted gross income allowable to him as itemized deductions under Sections 8.7, 8.8, 8.9 of this Chapter, whichever is applicable. As to modifications applicable in determining a nonresident partner's distributive share of partnerships items of deduction allowable as Federal itemized deductions, see Section 10.3 (Modification of partnership items) of this Chapter.

Statutory References

As to partnership income and deductions, see N.J.S.A. 54:8A-31.

18:10-10.2 Nonresident partners allocable share of income

(a) In determining the source (as either within or without New Jersey) of this a nonresident partner's share of partnership income, no effect shall be given to a provision in the partnership agreement which characterizes payments to the partner as salary or other consideration paid or distributable for services rendered to the partnership by the partner, or as being interest or other consideration paid or distributable for the use of capital of a partner.

(b) Likewise, except where authorized otherwise in accordance with Section 10.4 (Alternate methods) of this Chapter no effect shall be given to a provision in the partnership agreement which allocates to the nonresident partner, as income or gain from sources outside New Jersey, a greater proportion of his distributive share of partnership income or gain than the ratio of partnership income or gain from sources outside New Jersey to partnership income or gain from all sources.

Example:

If the total distributive share of a nonresident partner from all sources is \$5000 and 60 per cent of the partnership's income is from New Jersey sources, the nonresident partner would be required to report on his New Jersey nonresident return \$3,000 (60 per cent of \$5,000) as his partnership distributive share, even though, under the partnership agreement, his share of the total New Jersey income of the partnership may have been fixed at less than \$3,000.

(c) Likewise, except where authorized otherwise in accordance with Section 10.4 (Alternate methods) of this Chapter no effect shall be given to a provision in the partnership agreement which allocates to the nonresident partner a greater proportion of a particular partnership item of loss or deduction connected with New Jersey sources than his proportionate share for Federal income tax purposes of partnership loss or deduction generally, for example, if the share of a nonresident partner of partnership losses is 50 per cent for Federal income tax purposes, he would not be permitted to deduct on his New Jersey return more than 50 per cent of any particular partnership loss or deduction connected with New Jersey sources, irrespective of any special provisions of the partnership agreement assigning a larger percentage of the specific loss or deduction to him.

Statutory References

As to partnership income and deductions, see N.J.S.A. 54:8A-31.

18:10-10.3 Modification of partnership items in partner's return

(a) In determining the New Jersey adjusted gross income of a nonresident partner, any modification described in Section 7.1 (Adjusted gross income of a nonresident) of this Chapter which relates to an item of partnership income, gain, loss or deduction shall be made in accordance with partner's distributive share of Federal income tax purposes of such item, but shall be limited to the portion derived from or connected with New Jersey sources.

(b) In determining the New Jersey itemized deduction of a nonresident partner, any modification described in Sections 8.5 (Modifications reducing Federal itemized deductions) and 8.6 (Modifications increasing Federal itemized deductions) of this Chapter which relates to a partnership item which for Federal purposes would be allowable as an itemized deduction, shall be made in accordance with the partner's distributive share for Federal income tax purposes of such item, except in the case of a nonresident partner whose right to itemized deductions is limited by Section 8.7 (Computation of allowable deductions) of this Chapter.

(c) Where the nonresident partner's distributive share of partnership items of income, gain, loss or deduction derived from or connected with New Jersey sources are determined to any extent under the special rules set forth in Section 10.2 (Partners allocable share of income) of this Chapter, any applicable modification shall be similarly determined.

Statutory References

As to partnership income and deductions, see N.J.S.A. 54:8A-31.

18:10-10.4 Alternate methods of allocating nonresident partner's income

The Division of Taxation may, on application, authorize the use of such other methods of determining a nonresident partner's portion of partnership items derived from or connected with New Jersey sources, and the modifications related thereto, as may be appropriate and equitable on the terms and conditions as it may require.

Statutory References

As to partnership income and deductions, see N.J.S.A. 54:8A-31.

SUBCHAPTER 11. RETURNS AND LIABILITIES**18:10-11.1 Returns and liabilities; general provisions**

In general, the rules and tests described in the Federal Internal Revenue Code and its applicable regulations with respect to the requirements for filing income tax returns and liabilities for payment of tax of any individual, also apply in determining the filing requirements and tax liabilities for New Jersey tax purposes.

18:10-11.2 Who must file a New Jersey Emergency Transportation Tax return

(a) Except as otherwise provided herein, a New Jersey tax return must be made and filed by or for:

1. Every resident individual who is required to file a Federal income tax return for the taxable year, or whose New Jersey adjusted gross income for the taxable year, determined under Subchapter 7 (Adjusted Gross Income) of this Chapter, exceeds the sum of his New Jersey personal exemptions;

2. Every nonresident individual having New Jersey adjusted gross income for the taxable year, determined under Subchapter 7 (Adjusted Gross Income) of this Chapter, in excess of the sum of his New Jersey personal exemptions.

(b) A taxpayer who comes within any of the above requirements for filing a New Jersey tax return must file a return even if such return, after deductions, exemptions and credits, shows no tax liability.

(c) A taxpayer is not excused from making a return merely because he does not receive a copy of the return from the Division of Taxation. Copies of the prescribed forms will, so far as possible, be furnished to taxpayers by the Division, but a taxpayer who does not receive these forms should make an application to the Division of Taxation in ample time to have his return prepared and filed on or before the due date.

Statutory References

As to persons required to file, see N.J.S.A. 54:8A-44.

18:10-11.3 Persons not required to file a New Jersey Emergency Transportation Tax return

Any resident of New Jersey subject to the tax imposed by the Emergency Transportation Tax Act who has filed a 1970 income tax return with the State of New York and has paid the amount of income tax liability thereon to that State, shall not be required to file a return with the New Jersey Division of Taxation under the New Jersey Emergency Transportation Tax Act, based upon his 1970 income derived from sources in New York.

R.1972 d.25, eff. February 1, 1972;
See: 3 N.J.R. 29(d), 4 N.J.R. 54(a).

Statutory References

As to persons subject to tax, see N.J.S.A. 54:8A-19.

Case Notes

Emergency transportation tax relief provision: Emergency Transportation Tax Act upheld against equal protection and legitimate governmental purpose challenge, but remanded for future findings relevant to privileges and immunities clause challenge. *Salorio v. Glaser*, 82 N.J. 482, 414 A.2d 943 (1980), certiorari denied 101 S.Ct. 215, 449 U.S. 874,

66 L.Ed.2d 94 (1980), appeal dismissed, certiorari denied 101 S.Ct. 49, 449 U.S. 804, 66 L.Ed.2d 7.

18:10-11.4 Returns by or for minors

For tax purposes, a minor is a taxpayer and is subject to the same requirements for making New Jersey returns as are other individuals even though the minor's parent has, under local law, the legal right to the minor's earnings from personal services and actually receives such earnings. If the minor is unable to make his return, his parent, guardian or other person charged with the care of his person or property must make and file the return for him; see Section 11.1 (Individuals under a disability) of this Chapter.

Statutory References

As to persons required to file, see N.J.S.A. 54:8A-44.

18:10-11.5 Claims for refund or credit-return required

Every taxpayer who claims a refund or credit of tax withheld from his wages or estimated tax paid during the year, must file a return to obtain any such refund or credit, even though he would not otherwise be obliged to do so. A taxpayer who is not required to file a New Jersey return under paragraphs 1. and 2. of subsection (a) of Section 11.2 (Who must file) of this Chapter, and who files a Federal return only to obtain a refund or credit of Federal tax overpaid, is not required to file a New Jersey return unless he claims a refund or credit of New Jersey tax also.

Example:

A minor whose total earnings for the taxable year were less than \$600, from which only Federal income tax was withheld, but no Emergency Transportation tax, may be required to file a Federal return to obtain a refund of the Federal tax withheld, but is not required to file a New Jersey return.

18:10-11.6 Returns of military personnel

Persons in the United States armed forces are subject to the same requirements for filing New Jersey tax returns as any other taxpayers. However, see Subchapter 14 (Extension of Time) of this Chapter for extension of time.

18:10-11.7 Returns for short taxable periods

If an individual taxpayer has a short taxable period due to a change in accounting period, as explained in Subchapter 4 (Accounting Periods and Methods) of this Chapter, he must file a New Jersey return for such short period if he is required to file a Federal return for it, or if his New Jersey adjusted gross income for such period, determined under Subchapter 7 (Adjusted gross income) of this Chapter, exceeds the prorated portion of his New Jersey personal exemptions, for example, the amount which bears the same ratio to the full amount of such personal exemptions as the number of months in the short period bears to 12 months. For this purpose, the taxpayer's New Jersey personal exemp-

tions shall be the same as provided for Federal tax purposes in the Internal Revenue Code and Regulations.

18:10-11.8 Returns of husband and wife

(a) *Separate Federal returns.* If a husband and wife file separate Federal returns, they must also file separate New Jersey returns. For this purpose, they may use form NJTT-203, and their tax liabilities shall be separate.

(b) *Joint Federal returns.*

1. The Federal rules for determining whether a husband and wife qualify for filing a joint return also apply for New Jersey tax purposes. If a husband and wife file a joint Federal return, or if neither spouse files a Federal return, they may either:

i. File a joint New Jersey tax return (on form NJTT-203), in which event their tax liabilities will be joint and several and each will be liable for the entire tax on such joint return, even though one spouse has no income; or

ii. Elect to file separate New Jersey tax returns, provided they do so on a single form (Combined Non-resident Return, form NJTT-209 for nonresidents) and comply with the requirements of the Division of Taxation relative to the determination of their separate taxes on such single form. In this event, their tax liabilities will be separate except as provided in subsection (c) of this Section;

2. For purposes of tax computation only, the Internal Revenue Code permits the Federal tax to be determined on a joint Federal return as though the taxable income reported on such return were split equally between husband and wife and the tax computed separately on each half. Since the Emergency Transportation Tax Act does not include a similar provision, a husband and wife are not permitted to determine their New Jersey tax on either joint or separate returns on the basis of splitting their combined income equally.

(c) *Separate returns filed on a single form; application of payments; refunds.* If a husband and wife file separate New Jersey returns on a single form (NJTT-209) pursuant to subparagraph ii of paragraph 1 of subsection (b) of this Section, any excess payment by either spouse (including withheld and estimated taxes) may be applied against any balance of tax due from the other spouse, and refund of any excess not so applied may be made payable to both spouses except that neither of these things will be done if the return of either spouse includes a demand that any overpayment made by him or her shall be applied only on account of his or her separate liability.

Statutory References

As to persons required to file, see N.J.S.A. 54:8A-44.

18:10-11.9 Returns for decedents

The same rules for filing returns apply to a decedent as in the case of any other taxpayer. The executor or administrator of the estate of a taxpayer who died during the taxable year, or any other person charged with the property of such a decedent, must make and file a return for him on the (NJTT-203 or NJTT-209), which would have been appropriate had he lived. For the decedent's taxable year which ends with the date of his death, the return shall cover the period during which he was alive.

Statutory References

As to the returns for decedents, see N.J.S.A. 54:8A-44.

18:10-11.10 Joint return after death

(a) Where one or both spouses die during the year and would have been entitled to file a joint New Jersey return had they lived, a joint New Jersey return may be made on form NJTT-203, if:

1. A joint Federal return was made for the taxable year;

2. The taxable year of both decedents or if the decedent and the surviving spouse (as the case may be) began on the same day and ended on different days only because of the death of either or both;

3. Neither taxpayer was reporting for a fractional part of a year as a result of a change in accounting period; and

4. The surviving spouse did not remarry before the end of the taxable year.

(b) Generally, the executor and administrator and the surviving spouse must unite in making a joint return. However, where the surviving spouse, alone, is authorized by the Internal Revenue Code and regulations to make a joint Federal return for himself and deceased spouse, he may also make a joint New Jersey return for both.

Statutory References

As to persons required to file, see N.J.S.A. 54:8A-44.

18:10-11.11 Individuals under a disability

(a) The return required for an individual who is unable to make a return by reason of minority, insanity or other disability shall be made and filed by his guardian, committee, fiduciary or other person charged with the care of his person or property (other than a receiver in possession of only a part of his property), or by his duly authorized agent.

(b) In such a case, the fiduciary or other person charged with the care of his person or property shall be liable for the tax.

Statutory References

As to filing by persons under a disability, see N.J.S.A. 54:8A-44.

18:10-11.12 Joint fiduciaries

If two or more fiduciaries are acting jointly for any individual under disability or for any estate or trust, the return required by Section 11.11 (Individuals under a disability) of this Chapter may be made and filed by any one of them.

18:10-11.13 Preparation of returns

(a) Each taxpayer should carefully prepare his return so as to fully and clearly set forth the data required to be stated therein. Incomplete or incorrect returns will not ordinarily be accepted as meeting the requirements of the Act.

(b) A written statement filed by a taxpayer which fully and clearly discloses all items of his income and the deductions therefrom, even though not made on the prescribed form, may be accepted as a tentative return sufficient to relieve the taxpayer from liability for the penalties imposed for delinquent filing, provided that it is filed within the prescribed time and is accompanied by full payment of any tax shown to be due and that it is replaced without unnecessary delay by a return made on the prescribed form.

(c) The Division of Taxation will permit, under prescribed conditions and upon compliance with official specifications, the reproduction of certain tax forms.

18:10-11.14 Reporting whole dollar amounts

(a) If the amount of any item which must be shown in a return is not a whole dollar amount, the taxpayer may, if he so elects, report it as a whole dollar amount. If he elects to do this, he must treat any part of a dollar in excess of \$.49 as a whole dollar, but may disregard any part of a dollar not in excess of \$.49. If the exact amount is \$1,234.50, he must report it as \$1,235.00, but if the exact amount is \$1,234.49, he may report it as \$1,234.00.

(b) This election to use whole dollar amounts applies only to items which are required to be shown in the return; it may not be used in computing the amount of the items.

Example (1):

If the taxpayer is required to report in his return the total of 101 transactions, each of which produced income or gain of \$10.49, the taxpayer may not disregard the extra 49 cents in each of these: the total income or gain derived from these transactions is \$1,059.49, and the right of election to report whole dollar amounts permits the taxpayer to disregard only the \$.49 included in this total.

(c) All items entering into the computation of the final balance of tax due or overpayment, such as amount of New

Jersey tax computed, statutory credit, and taxes withheld or paid as estimated tax, must be taken into account at the exact amount.

Example (2):

New Jersey taxable income	\$880.00
Tax computed on above amount	\$17.60
Statutory credit (taxpayer filing a separate return)	12.50
New Jersey tax	\$5.10
New Jersey tax withheld	7.61
Overpayment	\$2.51
Amount to be entered as an overpayment when reporting report payment as a whole dollar amount	\$3.00

If the facts are identical to those stated in the example above except that the New Jersey taxes withheld amounted to \$2.00 (instead of \$7.61), resulting in a tax due of \$3.10, he would be required to round this off to \$3.00, which is the final amount of tax due and payable.

18:10-11.15 Assessment, refund, other items in whole dollar amounts

The Division of Taxation, in any determination, assessment, addition, collection, refund or credit to be made pursuant to the provisions of these regulations, may disregard the fractional part of a dollar unless it amounts to \$.50 or more, in which case it shall be increased to \$1.00.

SUBCHAPTER 12. TIME AND PLACE FOR FILING RETURNS AND PAYMENT OF TAX**18:10-12.1 Time for filing returns**

(a) The returns of individuals required to be made under these regulations shall be filed on or before the 15th day of the fourth month following the close of the taxable year (April 15 in the case of a calendar year taxpayer).

(b) The words "close of the taxable year" referred to in subsection (a) of this Section have the same meaning for New Jersey tax purposes as when used for Federal tax purposes.

Statutory References

As to time for filing returns, see N.J.S.A. 54:8A-18.

18:10-12.2 Due date

The due date for filing of a return is the last day upon which the return is required to be filed in accordance with these regulations, or the last of the period covered by an extension of time allowed under Subchapter 14 (Extensions of Time) of this Chapter. As to the due date for payment of the tax, see Sections 12.10 through 12.13 of this Chapter.

18:10-12.3 Last day on a Saturday, Sunday or legal holiday

When the last day prescribed in these regulations (including the last day covered by an extension of time) for filing a return, making a tax payment, or performing any act falls on a Saturday, Sunday, or a day which is a legal holiday in the State of New Jersey, the performance of such act will be considered timely if it is performed on the next succeeding day which is not a Saturday, Sunday or legal holiday.

18:10-12.4 Mailing of returns

If a return is placed in the mails, it must be properly addressed, postage paid, and posted in ample time to reach, under ordinary handling of the mails, the prescribed office of the Division of Taxation on or before the due date.

18:10-12.5 Filing of return before due date; amendments required

(a) A return may be filed at any time prior to the date such return is required to be filed under these regulations.

(b) If a return is filed prior to the expiration of the taxable period, it must disclose the correct amount of income and deductions to the extent known to the taxpayer at the time such return is filed, and an estimate as nearly correct as possible of those items of income which cannot be definitely ascertained at the time the return is made.

(c) When it later appears that any item of income or deductions was not accurately reported, an amended return shall be filed on or before the final due date of such return. Relative to the tax due on such return, see Section 12.11 (Amended returns) of this Chapter. Until the due date of such return, it shall be considered as a tentative return, which will then become a final return unless an amended return is filed on or prior to such due date.

18:10-12.6 Returns of military personnel

A member of the United States Armed Forces is required to file his New Jersey tax return at the same time and in the same manner as any other taxpayer (see Section 11.6 (Returns of military personnel) of this Chapter).

18:10-12.7 Return for a decedent

(a) The due date for filing a return for a decedent, covering the period which ended with his death, is the same as if he had lived until the end of his normal taxable year. If he reported on a calendar year basis and died during 1962, the return covering the period from January 1, 1962 until his death is due on April 15, 1963, regardless of whether his death occurred early in 1962 or the last day of that year.

(b) The return may be filed at any time after the appointment and qualification of the executor or administrator and without waiting for the close of the decedent's normal taxable year.

(c) If a surviving husband or wife may file a joint return with the deceased spouse as permitted in Section 11.10 (Joint return after death) of this Chapter, the joint return shall be treated as if the taxable year of both spouses end on the date of the closing of the surviving spouse's taxable year. Accordingly, the time for filing the joint return would be the same as if the death had not occurred.

18:10-12.8 Change of accounting period

In the case of a short period return resulting from a change of accounting period (see Subchapter 4 (Accounting Periods and Methods) of this Chapter), the general filing requirements stated in Section 12.1 (Time for filing) of this Chapter shall likewise apply.

18:10-12.9 Place for filing returns

Returns must be delivered or mailed to the Division of Taxation, Emergency Transportation Tax Bureau, P. O. Box 1686, Trenton, New Jersey 08625.

18:10-12.10 Payment of tax

Except as otherwise provided in this Chapter, a person required to make and file a return under the provisions of these regulations shall, without assessment, notice or demand, pay in full any tax due thereon to the New Jersey Emergency Transportation Tax Bureau on or before the due date fixed for filing such return. As to extensions of time for payment of the tax allowed in connection with extensions of time to file a return, see Subchapter 14 (Extension of Time) of this Chapter.

Statutory References

As to payment of tax, see N.J.S.A. 54:8A-47.

18:10-12.11 Amended return filed on or before due date

Where a taxpayer has filed a return prior to the expiration of the taxable period (see Section 12.5 (Filing of return) of this Chapter) and later an amended return is filed on or before the final due date, the tax due upon the amended return must be paid in full, without assessment, notice or demand, on or before the due date for filing a final return for the taxable period.

18:10-12.12 Short period returns

In the case of a return for a period of less than 12 months, due to a change of accounting period, the tax due shall, without assessment notice or demand, be paid on or before the due date prescribed for filing such return.

18:10-12.13 Method of paying tax due

Any remittance by check or money order in payment of New Jersey tax should be made payable to the "New Jersey Emergency Transportation Tax Bureau".

1. Postage stamps will not be accepted in payment of the tax;

2. A cash register receipt will be issued for any cash payment of tax which is delivered in person at the office of the Emergency Transportation Tax Bureau;

3. When so paying his tax in cash, the taxpayer should, in every instance, request and obtain a cash register receipt;

4. Where payment is made otherwise than by cash delivered in person, an official receipt will be issued only on request;

5. Uncertified checks will be accepted in payment of taxes provided they are collectible for their full amount without any deduction for exchange or other charges;

6. The date on which the check is received will be considered the day of payment unless the check is returned dishonored.

SUBCHAPTER 13. SIGNING OF RETURNS, STATEMENTS AND OTHER DOCUMENTS

18:10-13.1 Signing of returns, statements and other documents—general provisions

(a) Except as provided in Section 13.2 (Signature by agent) of this Chapter, each individual (including a fiduciary) shall sign any return, declaration, statement or other document which he is making or filing pursuant to these regulations.

(b) The fact that an individual's name is signed to a return, declaration, statement or other document shall be prima facie evidence for all purposes that the return, declaration, statement or other document was actually signed by him.

Statutory References

As to signing of documents, see N.J.S.A. 54:8A-47.

18:10-13.2 Signature by agent

(a) When by reason of illness, absence, minority, nonresident or otherwise, the person required to make or file any return, declaration, statement or other document is unable to do so, the return, declaration, statement or other document may be made and signed by an agent or by a guardian or other person charged with the care of the person or property of the taxpayer.

(b) When a return, declaration, statement or other document is made and signed by an agent, the agent assumes responsibility for making and signing the return or other document, and incurs liability for the penalties provided for erroneous, false or fraudulent returns, declarations, statements or other documents.

Statutory References

As to signing of returns, see N.J.S.A. 54:8A-47.

18:10-13.3 Husband and wife signatures

(a) A return or declaration of a husband and wife (if not made by an agent) shall be signed by both spouses. If signed by one spouse, individually and as agent for the other, authorization for the action must accompany the return or declaration. The spouse acting as agent for the other shall, with the other spouse, assume responsibility for making the return and declaration and incur liability for the penalties provided for erroneous, false or fraudulent returns or declarations. However, if the signature or authorization of either the husband or the wife cannot be obtained because of absence or illness, and no power of attorney or written authorization is available for the same reason, a return or declaration signed by one spouse and offered to the Division of Taxation for filing as a joint return or declaration may be accepted as such if all the evidence indicates that the taxpayers intended to file it as a joint return or declaration.

(b) In the case of death of one or both spouses during the year for which a joint return is made under the circumstances referred to in Section 11.10 (Joint return after death) of this Chapter, the signatures and evidence of authorization required under the Internal Revenue Code and applicable regulations for such purpose shall apply for New Jersey tax purposes.

Statutory References

As to signing of documents, see N.J.S.A. 54:8A-47.

18:10-13.4 Certification

The making or filing of any return, declaration, statement or other document or copy required to be made or filed pursuant to these regulations including a copy of a Federal return, shall constitute a certification by the person making or filing the return, declaration, statement or other document or copy that the statements contained therein are true and that any copy filed is a true copy.

Statutory References

As to certification of documents, see N.J.S.A. 54:8A-47.

18:10-13.5 Signing of returns prepared by a person other than the taxpayer

(a) If a return required by the Emergency Transportation Tax Act is prepared for the taxpayer by another person, other than a regular full-time employee of the taxpayer, for a fee or other compensation or as an incident to the performance of other services for which the person received compensation, the person shall sign the return on the line designated "Signature of preparer other than taxpayer", and shall also enter his address and the date when he signs the return. The signature may be either written, stamped or otherwise legibly imprinted and shall constitute a certificate

by the person that, based on all information of which he has any knowledge, the return is correct and the statements contained therein are true.

(b) Any person who fails to sign a return as required by this regulation may be liable for the penalties provided for by Subchapter 20 (Penalties) of this Chapter of these regulations.

(c) This regulation in no way affects the taxpayer's obligation to sign and certify his return.

Statutory References

As to signing of documents, see N.J.S.A. 54:8A-47.

SUBCHAPTER 14. EXTENSIONS OF TIME

18:10-14.1 Extensions of time

(a) *General Provisions.* The Division of Taxation may grant a reasonable extension of time for filing any return or for payment of tax (or any installment) on such terms and conditions as it may require. As set forth in Sections 14.4, 14.5, 14.6 of this Chapter, a taxpayer granted an extension of time to file his Federal income tax return will automatically be entitled to a similar extension for State tax purposes, without application, as long as he attaches to his New Jersey return a copy of his approved Federal extension or a statement showing:

1. The extended due date of his Federal return;
2. The office of the District Director of Internal Revenue in which his return was filed; and
3. The office of the District Director of Internal Revenue which granted the extension, if different from the office in which the return was filed.

(b) In all other instances, the extension of time may be granted only upon filing an application for an extension. Thus, if no Federal extension has been obtained or if the Federal extension only extends the time to pay the tax, a separate New Jersey application for an extension must be filed with the Division of Taxation prior to the due date of the return or prior to the end of any prior extension.

18:10-14.2 Form of application and place of filing

Where an extension to file a tax return is sought, the application should be made by letter. All applications for extensions of time must be filed with the New Jersey Emergency Transportation Tax Bureau.

Statutory References

As to extension of time for filing, see N.J.S.A. 54:8A-18.

18:10-14.3 Maximum period of extension of time to file a return

(a) An extension of time to file a return on an initial application will be limited to a period of time not in excess of three months. Longer periods of time will not be granted unless sufficient need for such extended period is clearly shown.

(b) In no event will an extension to file a return be granted in excess of six months for taxpayers within the United States, except in the case of members of the Armed Forces of the United States.

(c) An extension in excess of six months may be granted to taxpayers who are outside the United States and Puerto Rico.

Statutory References

As to extension of time for filing, see N.J.S.A. 54:8A-18.

18:10-14.4 Automatic extensions to file returns and to pay the tax where federal extension granted

An individual or fiduciary granted an extension of time to file his Federal income tax return is automatically entitled to a similar extension of time to file his New Jersey Emergency Transportation Tax return, without application, as long as a copy of the approved Federal extension or a statement such as described in Sections 14.1, 14.2, 14.3 of this Chapter, is attached to the New Jersey return when it is filed. An extension of time to file a return automatically extends the time for payment of the tax to the same date. However, interest must be paid at the rate of six per cent per year on any balance of tax due from the original due date of the return (determined without regard to any extension time) to the date of payment.

18:10-14.5 Automatic extension for American citizen abroad

(a) A taxpayer who qualifies for an automatic extension of two months to file his Federal income tax return because he is an American citizen traveling or residing abroad on the date his return is due or who has received a Federal extension of time to a date beyond the two month period also shall be entitled to a similar extension to file his New Jersey tax return, provided however, he attaches to his return a copy of the Federal extension or a statement showing that he qualifies for an automatic two month extension to file his Federal income tax return.

(b) The time to pay the tax is also similarly automatically extended. However, there must be added to the tax interest at the rate of six per cent per year on any balance of tax due from what would be the date of the return if there were no extension to the date of the payment.

18:10-14.6 Member of the Armed Forces

Ordinarily a member of the Armed Forces of the United States is required to file his New Jersey tax return at the same time as prescribed for other taxpayers. As in the case of other American citizens abroad, if the person is abroad on the due date of his return, he is granted an automatic extension of two months as stated in Section 14.5 (Automatic extension) of this Chapter.

18:10-14.7 Extension of time for payment of tax; interest due

(a) An extension of time for filing a return automatically extends the time for payment of the tax to the same date.

(b) The Division of Taxation also may, apart from any extension to file, grant a reasonable extension of time for payment of the tax upon receipt of a letter from the taxpayer giving complete information as to the reasons for his inability to make payment of the tax on or before the prescribed due date. Where the time for payment of any tax is extended interest must be paid at the rate of six per cent per year on any balance due from the original due date of the return (determined without regard to any extension) to the date of payment.

**SUBCHAPTER 15. REQUIREMENTS
CONCERNING RETURNS, NOTICES,
RECORDS AND STATEMENTS**

18:10-15.1 Permanent books of account or records

(a) Every person subject to tax or liable for the collection thereof, and any person required to file a return of information with respect to income, shall keep permanent books of account or records, including inventories, as are sufficient to establish the amount of gross income, deductions, credits and other matters required to be shown by the person in any return of such tax or information.

(b) The Division of Taxation is authorized to prescribe the contents and form of returns and statements and may require the inclusion in a return, document, or statement of any information it deems necessary for the proper enforcement of the Emergency Transportation Tax Act.

Statutory References

As to administration of returns and records, see N.J.S.A. 54:8A-55.

18:10-15.2 Records to be kept by wage earners

Individuals whose gross income includes salaries, wages, or similar compensation for personal services rendered, are required with respect to this income to keep such records (including duplicate copies of the wage and tax deductions statements furnished by their employers) as will enable the Division of Taxation to determine the correct amount of

income subject to tax. It is not necessary, however, that with respect to this income individuals keep the books of account and records required by Section 15.1 (Records) of this Chapter.

18:10-15.3 Form of records

No particular form is required for keeping the records, but systems of accounting shall be used as will enable the Division of Taxation to ascertain whether liability for tax or return of information is incurred and, if so, the correctness of the amounts required to be reported in any return of tax or information.

18:10-15.4 Records of employers and other persons required to file information returns

Every employer or withholding agent, as defined for Federal withholding tax purposes, required under Subchapter 18 (Withholding of Tax) of this Chapter to deduct and withhold taxes upon the wages of employees, and every person required to file information returns, shall keep all records pertinent to these taxes and information reports available for examination and inspection by the Division of Taxation, or its authorized representatives.

18:10-15.5 Records requiring information

(a) No particular form is prescribed for these records. However, in the case of employers the records should include:

1. The amounts and dates of all wage payments subject to New Jersey tax;
2. The names, addresses and occupation of employees receiving these payments;
3. The periods of their employment;
4. The periods for which they are paid by the employer while absent due to sickness or personal injuries and the amount and weekly rate of the payments;
5. Their social security account numbers;
6. Their tax withholding exemption certificate;
7. The employer's identification number, record of withholding returns and reports filed;
8. The dates and amounts of withholding tax payments made.

(b) For employees performing services partly within and partly without the State, a record of the allocation used for withholding purposes must be kept.

18:10-15.6 Notice by Division of Taxation requiring returns, statements, or the keeping of records

The Division of Taxation may require any person, by notice served upon him, to make returns, render statements, furnish copies of Federal income tax returns and of Federal audit determinations, or keep specific records as the Division of Taxation may deem necessary to verify whether or not the person is complying or has complied with the Emergency Transportation Tax Act.

18:10-15.7 Copies of returns, schedules and statements

Every person who is required by these regulations or by instructions applicable to any form prescribed herein to keep a copy of any return, schedule, statement or other document, shall keep the copy as a part of his records.

18:10-15.8 Place for keeping records

The books and records required by these regulations shall be kept at locations accessible to the representatives of the Division of Taxation, and shall be made available for inspection by its representatives.

18:10-15.9 Retention of records

The books and records required to be kept by these regulations shall be retained so long as the contents may become material in the administration of the Emergency Transportation Tax Act.

18:10-15.10 Power to require other information returns

The Division of Taxation may, in its discretion, require the filing of information returns at any time, so long as the information may become material in the administration of the Emergency Transportation Tax Act.

Statutory References

As to administration of Emergency Transportation Tax Act, see N.J.S.A. 54:8A-55.

18:10-15.11 Notice of qualification as receiver or other fiduciary

Every receiver, trustee in bankruptcy, assignee for benefit of creditors, or other fiduciary of a taxpayer subject to New Jersey Emergency Transportation Tax Act or of an employer which must withhold New Jersey Emergency Transportation Taxes pursuant to Subchapter 18 (Withholding of Tax) of this Chapter required under the Internal Revenue Code of 1954 and its applicable regulations to give notice of his or its qualification to act in this capacity, shall, within the same required period, give written notice to the New Jersey Emergency Transportation Tax Bureau, P.O. Box 1686, Trenton, New Jersey 08625.

SUBCHAPTER 16. REPORT OF CHANGE IN FEDERAL TAXABLE INCOME**18:10-16.1 Report of change in Federal taxable income**

(a) If the amount of a taxpayer's Federal taxable income is changed or corrected by the United States Internal Revenue Service or other competent authority, or as the result of a renegotiation of a contract or subcontract with the United States, the taxpayer shall report the change or correction to the Division of Taxation within 90 days after the final determination of the change, correction, or renegotiation and shall concede the accuracy thereof or state wherein it is erroneous.

(b) The report may be required at any other time if the Director deems it necessary.

Statutory References

As to the change in Federal Taxable Income, see N.J.S.A. 54:8A-44.

18:10-16.2 Form of report of change in Federal taxable income

(a) The report referred to in Section 16.1 (Report of change) of this Chapter, shall be made on form NJTT-115. It must be accompanied by a copy of the final Federal determination or renegotiation agreement as well as any other pertinent data in all cases in which a refund based on the final determination or renegotiation agreement is claimed.

(b) Where additional tax is due, the tax may in lieu of a copy of the final determination or renegotiation agreement, give full details of the changes on form NJTT-115. The report shall be accompanied by full payment of any tax shown to be due and shall be forwarded separately from, and not as part of, any other report or return. The report must be made by the taxpayer regardless of whether he believes a modification of his tax liability is required.

(c) A nonresident taxpayer shall make a report, and shall file an amended return with the Division of Taxation as required in Section 16.4 (Amended return) of this Chapter only if the Federal change, results of renegotiation or amended return relate to income taxable to a nonresident under the Emergency Transportation Tax Act.

18:10-16.3 Report of husband and wife

(a) A husband and wife who file a joint Federal return but file separate State returns on form NJTT-209 must file separate forms NJTT-115 to report Federal adjustments affecting their separate State returns. Each report must show the changes made on the Federal return attributable to the reporting spouse. These separate reports should be filed together.

(b) If the Federal changes are attributable solely to one spouse, only that spouse must file form NJTT-115. However, the report should give the name of the other spouse and contain a statement that the Federal changes do not affect the separate State return of the other spouse.

Statutory References

As to changes in Federal taxable income, see N.J.S.A. 54:8A-44.

18:10-16.4 Amended return

A taxpayer who files an amended Federal return shall also file, within 90 days thereafter, a similarly amended return with the Division of Taxation and shall pay the additional tax, if any, shown to be due thereon.

Statutory References

As to amended Federal return, see N.J.S.A. 54:8A-44.

18:10-16.5 Federal changes not binding

The Division of Taxation is not required to accept as correct any change in taxable income as previously set forth but may conduct an independent audit or investigation in this regard.

18:10-16.6 Final determination of tax liability

A final determination for purposes of this Subchapter includes but is not limited to the following instances:

(a) A closing agreement made under section 7121 of the Internal Revenue Code of 1954 finally and irrevocably adjusting and settling a taxpayer's tax liability.

(b) An allowance by the Commissioner of Internal Revenue of a refund of any part of the tax shown on the taxpayer's return or of any deficiency thereafter assessed, whether the refund is made on the Commissioner's own motion or pursuant to a judgment of a court.

(c) The 90 day deficiency notice pursuant to Section 6212 of the Internal Revenue Code of 1954, unless a timely petition to redetermine the deficiency is filed in the Tax Court of the United States, in which event the judgment of the court of last resort affirming the deficiency, or their determination of the deficiency pursuant to a judgment of the court of last resort, is the final determination.

(d) The assessment of a deficiency pursuant to a waiver filed under Section 6213 of the Internal Revenue Code of 1954, where no 90-day deficiency notice is issued.

Statutory References

As to final determination of tax liability, see N.J.S.A. 54:8A-44.

18:10-16.7 Recomputation of tax

If the report of a change in Federal taxable income or an amended New Jersey return conforming to an amended Federal return is filed after expiration of the period otherwise prescribed for assessment or refund, the amount of any assessment, credit or refund shall not exceed the increase or reduction in tax attributable to the Federal change or to the items amended on the taxpayer's amended Federal return.

Statutory References

As to recomputation of tax, see N.J.S.A. 54:8A-44.

SUBCHAPTER 17. CHANGE OF ELECTION**18:10-17.1 Changes of election; general**

Elections by taxpayers for New Jersey tax purposes are of two kinds:

(a) Those as to which the Emergency Transportation Tax Act provides that the taxpayer's election for Federal tax purposes shall be binding for New Jersey tax purposes;

(b) Those as to which the Emergency Transportation Tax Act authorizes a different or independent election for New Jersey tax purposes.

Statutory References

As to change of election, see N.J.S.A. 54:8A-9.44.

18:10-17.2 Federal elections binding for New Jersey tax purposes

(a) An individual taxpayer's election to claim the Federal standard deduction for any year is binding for New Jersey tax purposes; he must determine his New Jersey taxable income for that year by using the New Jersey standard deduction and may not claim the New Jersey itemized deduction.

(b) An election by a husband and wife to file separate Federal returns for any year is also binding for New Jersey tax purposes; they must file separate New Jersey returns for that year.

18:10-17.3 Other examples of Federal elections for New Jersey tax purposes

(a) Other examples of Federal elections which are binding for New Jersey tax purposes include, but are not limited to, those relating to:

1. The reporting of income from sale or exchange of property on the installment basis;
2. Changes in inventory basis;
3. Capitalization of drilling, development and exploration costs and similar items set forth in the Internal Revenue Code;
4. Recognition and nonrecognition of gain or loss in the case of certain liquidations; and
5. Bad debt reserves, recoveries, and other items.

18:10-17.4 Effect of election for New Jersey tax purposes

(a) For New Jersey tax purposes, a taxpayer may not change his election as to any such matter unless he also changes his election for Federal tax purposes. Whenever a taxpayer's election as to any of these matters is changed for Federal tax purposes either by the taxpayer himself or by the Internal Revenue Service, this will be treated as a change for New Jersey purposes also.

(b) Any change of election for Federal tax purposes under this subsection which results in an increase or decrease in Federal taxable income will be deemed a change reportable as provided in Subchapter 16 (Report of Change) of this Chapter and recomputations of tax with respect to these changes shall be made in accordance with the provisions of Section 16.7 (Recomputation of tax) of this Chapter.

18:10-17.5 New Jersey elections not controlled by Federal elections

(a) The most common examples of elections in this class are those relating to:

1. The claiming of the New Jersey standard deduction or the New Jersey itemized deduction by a taxpayer who has itemized his deductions on his Federal return;
2. The filing of a joint New Jersey return or separate New Jersey returns by a husband and wife who file a joint Federal return; and
3. The allocation or division of the New Jersey standard or itemized deduction between a husband and wife who determine their New Jersey taxable income separately, either on separate returns or on a combined form.

(b) A taxpayer's election as to any of the matters listed in subsection (a) of this Section may be changed without prior application to the Division of Taxation subject to the conditions stated in Section 17.6 (Conditions for change) of this Chapter.

(c) Any election allowed for New Jersey tax purposes which is not controlled by the taxpayer's election for Federal tax purposes, other than the elections covered by subsection (a) of this Section may be changed after the due date of the original return only with the prior approval of the Division of Taxation, and only upon those terms and conditions as the Division may specify in each individual case.

18:10-17.6 Conditions for change of certain New Jersey elections not controlled by Federal elections

The following are the conditions under which a taxpayer may change his election with respect to any of the matters listed in paragraphs 1., 2. and 3. of subsection (a) of Section 17.5 (New Jersey elections not controlled) of this Chapter:

(a) *File amended return.*

1. The change of election must be made by filing a complete amended return for each taxable year involved, properly signed by each taxpayer who made or agreed to the original election;
2. If any other taxpayer was not required to file a return by reason of the original election, but is required to file a return by reason of the change of election, the amended return by the taxpayer who filed originally must be accompanied by a return signed by such other taxpayer.

(b) *Underpayment of tax; assessment date.*

1. Where the change of election results in an underpayment of tax on the part of any taxpayer required to file a return or amended return pursuant to subsection (a) of this Section, any tax or additional tax resulting from the change of election shall be deemed to have been assessed on the date of filing the original return, and the change shall not be effective unless all tax due from each taxpayer, plus any interest as required by Section 19.2 (Deficiency assessment notice) of this Chapter, is or has been paid at the time the return or amended return making the change of election is filed;

2. For the purposes of this subsection, an overpayment by one spouse will be treated as payment of tax due from the other spouse, provided the spouse who made the overpayment authorizes the application.

(c) Where a change of election results in an overpayment of tax, the return or amended return required by subsection (a) of this Section will be deemed a claim for refund, as provided in Subchapter 23 (Refunds) of this Chapter, but refund will be allowable only if the return or amended return is filed within two years from the payment of the tax or from the date required for filing of the return.

1. To the extent that a change of election serves or operates, as an offset, to reduce a deficiency of tax under Section 19.2 (Deficiency assessment notice) of this Chapter for the same taxable year, the change of election is not deemed to result in an overpayment and the offset will be allowed without regard to the time limitation mentioned above;

2. The time limitation will not apply to a change of election which, considered independently of any other adjustment for the taxable year, would have resulted in a deficiency or underpayment of tax for the taxable years.

(d) Where the proposed change of election involves a joint New Jersey return of a husband and wife or separate returns of the spouses on a combined form (either as the original return or as an amended return) and the sum of the payments by both spouses on the original return or returns exceeds the taxes due after giving effect to the change of election, refund of the excess may be made payable to both spouses.

(e) If more than one election is being changed for any taxable year, all the changes may be shown in one return or amended return for that year, filed by each taxpayer who made or agreed to each of the original elections.

(f) No change of election pursuant to this Section shall be effective if disapproved by the Division of Taxation.

18:10-17.7 Additions to tax and civil penalties

The filing and acceptance of returns or amended returns pursuant to this Subchapter shall not affect the liability for any addition to tax or penalty to which the taxpayer or taxpayers may have been subject prior to the filing of the return or amended returns, except that the amount shall be computed by giving effect to any change of election made in the return or amended return.

SUBCHAPTER 18. WITHHOLDING OF TAX**18:10-18.1 Requirements of withholding tax from wages**

(a) Every employer maintaining an office or transacting business within the State and making payment of any wages taxable under The Emergency Transportation Tax Act shall deduct and withhold from such wages for each payroll period during each calendar year an amount substantially equivalent to the tax reasonably estimated to be due as the result of the inclusion in the employee's New Jersey adjusted gross income of his wages received during such calendar year.

(b) For purposes of this Subchapter, the provisions of the Federal Internal Revenue Code and its applicable regulations, with respect to deducting and withholding of Federal income tax by employers from wages, including the meaning of the various Federal terms (such as "employer", "employee", "wages", "payroll period", "withholding exemption") shall apply for New Jersey tax purposes, except otherwise specifically provided in this Subchapter or where the Federal rules and definitions are clearly inconsistent with and inapplicable to the provisions of this Subchapter.

Statutory References

As to withholding return see N.J.S.A. 54:8A-49.

18:10-18.2 Definition of employer

An employer is any person or organization qualifying as an employer for Federal income tax withholding purposes and maintaining an office or transacting business within New Jersey, whether or not a paying agency is maintained within the State.

18:10-18.3 Definition of wages

(a) Payments which are considered wages for Federal income tax withholding purposes are also wages for purposes of New Jersey withholding tax. However, the term wages in respect to withholding of New Jersey tax shall not include:

1. Compensation paid to members of the Armed Forces of the United States, including Reserve and National Guard components; and

2. Compensation paid to a seaman who is a member of the crew on a vessel engaged in foreign, coastwise, intercoastal, interstate or non-contiguous trade (46 U.S.C.A. 601).

(b) A determination by the Internal Revenue Service which relieves an employer from withholding responsibility with respect to payments to an employee shall also apply for New Jersey tax withholding purposes. Where an employer is required to reinstate withholding of Federal income tax with respect to an employee, the obligation is equally applicable for New Jersey withholding purposes.

18:10-18.4 Determining tax to be withheld

(a) The New Jersey tax to be withheld with an employer must be determined in accordance with one of the following tax withholding methods:

Method I—Wage Bracket Table Method

Method II—Exact Calculation Method

Method IV—Single Rate Method

Method V—Formula Method for Approximating Effective Rate

(b) In cases of special situations, however, an employer may apply to the Division of Taxation for permission to use another method. The wage bracket table method and the other methods listed above are set out in Appendix I of this Chapter and are also obtainable from the New Jersey Emergency Transportation Tax Bureau in booklet form (Form NJTT-2100). The rules for determining the tax to be withheld on supplemental wages and the other rules applicable in determining the proper amount of tax to be withheld are provided for or referred to in subsequent Sections of this Subchapter.

Statutory References

As to withholding tax, see N.J.S.A. 54:8A-17.

18:10-18.5 Supplemental wages

(a) Where supplemental wages such as bonuses, commissions, overtime pay, sales awards and tips are paid at the same time as regular wages, the tax to be deducted and withheld should be determined as if the total of the supplemental and regular wages were a single wage payment for the regular payroll period.

(b) *Determination.*

1. If supplemental wages are paid at a different time, the employer may determine the tax to be withheld by adding the supplemental wages either: to the regular wages for the current payroll period or to the regular wages for the last preceding payroll period within the same calendar year;

2. However, if tax has been withheld from the employee's regular wages, the employer may withhold from the supplemental wages at the rate of five percent, without any allowance for exemptions or deductions.

18:10-18.6 Payroll periods

The New Jersey tax is to be withheld on the basis of the same payroll period which is properly used for Federal income tax purposes.

Statutory References

As to withholding tax payroll periods, see N.J.S.A. 54:8A-17.

18:10-18.7 Withholding exemptions

(a) In determining the proper tax to be deducted and withheld from an employee's wages, the employer shall allow the number of exemptions, including allowances for itemized deductions, claimed by an employee on Federal Form W-4.

(b) However, if an employee has not filed Federal Form W-4 or wishes to claim exemptions other than those claimed for Federal income tax withholding purposes, a completed New Jersey Withholding Exemption Certificate, form NJTT-2104, should be obtained from the employee and the number of exemptions claimed thereon allowed.

Statutory References

As to exemption certificate, see N.J.S.A. 54:8A-17.

18:10-18.8 Withholding of additional amounts pursuant to agreement

(a) In addition to the tax required to be withheld under this Subchapter an employer and employee may agree that an additional amount be withheld from the employee's wages. The agreement must be in writing and in the form as the employer prescribes. The agreement is effective for the period as the employer and employee mutually agree upon. If the agreement fails to provide a termination date, either the employer or the employee, by furnishing a written notice to the other, may terminate the agreement effective with respect to the first payment of wages made on or after the subsequent January 1 or July 1 which occurs at least 30 days after the date on which the notice is furnished.

(b) The amount deducted and withheld pursuant to the agreement between the employer and employee shall be considered as tax required to be deducted and withheld under this Subchapter, and all provisions of law and regulations applicable to the tax are applicable with respect to any amount deducted and withheld pursuant to such agreement.

Statutory References

As to withhold tax, see N.J.S.A. 54:8A-17.

18:10-18.9 Determining tax to be withheld on wages paid to a nonresident

(a) An employer shall deduct and withhold tax on all wages paid to an employee who is a nonresident for services performed in New Jersey. The tax to be deducted and withheld shall be determined in accordance with Sections 18.4 through 18.8, this Section, Section 18.10 of this Chapter and Appendix I of this Chapter.

(b) If the services of a nonresident employee are performed entirely in New Jersey his employer shall deduct and withhold the tax from all wages paid to the employee.

(c) Wages paid to a nonresident employee for personal services rendered entirely without New Jersey are not subject to withholding.

18:10-18.10 Income of a nonresident for services performed partly within and partly without the State

(a) If a nonresident employee performs services partly within and partly without New Jersey, he should file a Certificate of Nonresident and Allocation of Withholding Tax (form NJTT-2104.1) for the purpose indicated below.

(b) The employer may withhold on the basis of the apportionment shown by the nonresident employee on form NJTT-2104.1, but must nevertheless make necessary adjustments during the year so that the proper amount of tax is withheld from the employee's wages. For the purpose of making these adjustments, the proportion of remuneration which is paid for services rendered within New Jersey shall be determined as follows:

1. If the services are rendered by a traveling salesman, agent or other employee whose compensation on the basis of commissions depends directly on the volume of business transacted by him, the amount attributable to services within New Jersey is that proportion of the compensation received which the volume of business transacted by the employee within the State of New Jersey bears to the volume of business transacted by him both within and without the State of New Jersey;

2. With respect to all other employees, the amount of wages attributable to services within New Jersey is that proportion of the total compensation which the total number of working days employed within New Jersey bears to the total number of working days employed both within and without New Jersey, exclusive of nonworking days. Nonworking days usually include Saturdays, Sundays, holidays, and the days of absence because of illness, personal injury, vacation or leave with or without pay.

(c) The portion of wages allocable to New Jersey may be determined by the employer on the basis of the preceding year's experience, except that the employer shall make any necessary adjustments during the year to insure that the required tax is withheld for the current year. If the employee reasonably expects that the preceding year's experience will not be applicable to the current year, he may furnish to his employer a statement on Form NJTT-2104.1, estimating the proportion of his wages allocable to New Jersey, or the employer himself may make the estimate and may then withhold on that basis. In either case, however, the employer is required to make the necessary adjustments during the year so that the proper amount is withheld from the employee's salary for the current year.

(d) Where a nonresident employee will work only a short period of time within New Jersey and it is reasonably expected that the total wages of the nonresident employee for services rendered within New Jersey will not exceed his personal exemptions, the employer need not withhold or deduct any amount from his wages until the aggregate amount paid to him exceeds his exemptions.

(e) An employer is required to withhold on all wages paid to a nonresident who works partly within and partly without New Jersey unless there is filed with him the statement referred to above (Form NJTT-2104.1) or unless the employer maintains adequate current records to determine accurately the amount of wages from New Jersey sources. The mere filing of Form NJTT-2104.1 does not, however, relieve the employer from the duty of withholding the proper amount of tax from wages paid to an employee. Form NJTT-2104.1 is to be retained by the employer but is to be available for inspection by representatives of the Division of Taxation.

18:10-18.11 Information statement for employee

(a) Every employer required to deduct and withhold from an employee a tax under this Subchapter, or who would have been required to deduct and withhold tax under the withholding methods and procedures prescribed in Sections 18.4 through 18.10 of this Chapter and Appendix I of this Chapter if the employee had claimed no more than one withholding exemption, is required to furnish to each employee in respect to the wages paid by the employer to the employee during the calendar year, a statement, in duplicate, on form NJTT-2102, New Jersey Wage and Tax Statement, showing the amount of wages paid by the employer to the employee during the calendar year, the amount deducted and withheld as tax and the other information required to be shown on the form.

(b) To meet the requirement of this Section, an employer must furnish his employee with the tax return copy and the employee's copy of completed Form NJTT-2102. The required statement, in duplicate, shall be furnished the employee on or before February 15 following the close of the calendar year, or if his employment is terminated before the close of the calendar year, within 30 days after the last payment of wages is made.

18:10-18.12 Determination of whether Form NJTT-2102 must be used

(a) A statement on Form NJTT-2102 must be furnished to each employee whose wages during any payroll period are equal to or in excess of the lowest wage from which tax must be withheld in the case of an employee claiming one exemption, if the wage bracket table method of withholding provided for in Sections 18.4, 18.5, 18.6, 18.7, 18.8 of this Subchapter and Appendix I of this Chapter are used.

(b) The New Jersey Emergency Transportation Tax Bureau copy (copy No. 4) of NJTT-2102 must be filed with the

New Jersey Emergency Transportation Tax Bureau, P.O. Box 1686, Trenton, New Jersey 08625, on or before February 28, together with Form NJTT-2103, Reconciliation of New Jersey Tax Withheld. (See Section 18.25 (Filing annual reconciliation) of this Chapter) as to the filing copies of Form NJTT-2102.)

Statutory References

As to withholding tax, see N.J.S.A. 54:8A-17.

18:10-18.13 Wages to be reported on Form NJTT-2102

Where Form NJTT-2102 is required to be furnished an employee, his aggregate wages for the entire calendar year for services performed both within and without New Jersey shall be reported on the form.

Statutory References

As to wages reported on Form NJTT-2102, see N.J.S.A. 54:8A-17.

18:10-18.14 Credit allowed for tax withheld

The tax deducted and withheld from wages in any calendar year shall be allowed as a credit against the tax of the person from whose wages the tax was withheld. This credit shall be so allowed even though the tax has not been paid over to the Division of Taxation by the employer.

18:10-18.15 Year that credit allowed

The tax withheld during any calendar year shall be allowed as a credit against the tax imposed under the Emergency Transportation Tax Act for the taxable year which begins in the calendar year. Thus, a taxpayer reporting on a calendar year basis, receives credit for the tax withheld during his entire reporting year. A taxpayer filing on a fiscal year basis is allowed credit against his tax for the tax withheld in the calendar year during which the fiscal year began.

Example:

A files on a fiscal year basis beginning June 1, 1967 and ending May 31, 1968. The full amount of tax withheld during the calendar year 1967 must be claimed as a credit on the fiscal year return and it may not be prorated to reflect the portion withheld from June 1, to December 31, 1967. The Wage and Tax Statement for 1967 (Form NJTT-2102) must be attached to the return filed for the fiscal year ending May 31, 1968.

18:10-18.16 Credit on return for less than a full taxable year

If the person from whom the tax was withheld has more than one taxable year beginning in a calendar year, the full amount of the tax withheld during the calendar year shall be credited against the tax for the last taxable year beginning in the calendar year.

Example:

B files his returns on a calendar year basis. He is permitted to change to a fiscal year basis and his first return on this basis is for the fiscal year beginning July 1, 1967 and ending June 30, 1968. He also files the required short period return for the period January 1, 1967 to June 30, 1967. The credit for the tax withheld for the calendar year 1967 shall be applied against the tax for the fiscal year July 1, 1967 to June 30, 1968, since the fiscal year is the last taxable year beginning in the calendar year 1967. Thus, no credit with respect to the tax withheld during the calendar year 1967 may be applied to the tax for the short period return, January 1, 1967 to June 30, 1967.

18:10-18.17 Employer's returns and payment of withheld taxes; general requirements

Every employer, required to deduct and withhold taxes from wages under this Subchapter shall file an employer's return on a quarterly basis and, with the return, shall pay over to the Division of Taxation the taxes so required to be deducted and withheld. However, where the wages paid by an employer are not sufficient in amount to require withholding of taxes the employer shall file an annual return. The various requirements in respect to quarterly and annual returns are provided for or referred to in the following Sections of this Subchapter.

Statutory References

As to withholding return, see N.J.S.A. 54:8A-49.

18:10-18.18 Employer's returns and payment of withheld taxes; specific requirements

(a) *Quarterly returns.* An employer's return on a quarterly basis shall be filed and the tax paid quarterly by every employer required to withhold taxes from wages for quarterly periods ending on March 31, June 30, September 30 and December 31.

(b) *Annual returns.* An employer's return on an annual calendar year basis shall be filed by an employer where the wages paid to employees during the calendar year were not sufficient in amount to require withholding on the basis of the withholding tax tables and the withholding methods prescribed in Sections 18.4 through 18.10 and Appendix I of this Chapter.

Statutory References

As to withholding return, see N.J.S.A. 54:8A-49.

18:10-18.19 Due dates for filing employer's returns

(a) *Quarterly returns.*

1. An employer required to make a quarterly return under this Section shall, for each quarterly period, file an Employer's Quarterly Return of New Jersey Emergency Transportation Tax Withheld (Form NJTT-2102 or NJTT-2101M) with payment of the tax withheld on or before the last day of the month following the close of the quarterly periods specified in Section 18.18 (Employer's returns; specific requirements) of this Chapter;

2. Consecutive returns for each quarterly period, accounting for all tax withheld during the year, must be filed by an employer who is required to report quarterly;

3. If no tax was withheld during a particular quarterly period, a return still must be filed for the period, together with a statement explaining why no tax was withheld.

(b) *Annual returns.* An employer required to make an employer's return on an annual basis under this regulation shall file an Employer's Annual Return of Form NJTT-2103 or NJTT 2103M for each calendar year on or before February 28 of the following year. This annual return will also serve as the transmittal form for an employer's use in sending all Emergency Transportation Tax Bureau copies (copy No. 4) of Forms NJTT-2102 furnished to employees.

18:10-18.20 Change of reporting period

If an employer reporting on an annual basis begins to withhold tax, he must file a quarterly return in accordance with the provisions of subsection (a) of Section 18.19 (Due dates for employers returns) of this Chapter.

18:10-18.21 Return of a governmental employer

The return of a governmental employer should be made by the person designated for that purpose or controlling the payment of wages.

18:10-18.22 Transmittal of returns

Employer's returns under this Section shall be forwarded to the New Jersey Emergency Transportation Tax Bureau, P.O. Box 1686, Trenton, New Jersey 08625. No listing of employees or itemization of respective taxes withheld shall be attached to or accompany the employer's quarterly return. (See Section 18.25 (Filing annual reconciliation) of this Chapter concerning the filing of Forms NJTT-2102 and NJTT-2103.)

18:10-18.23 Final returns

(a) The last return of tax withheld for any employer who discontinues his business or permanently ceases to pay wages shall be marked "Final Return", and filed within 30 days after the end of the month in which business or payment of wages ceased, irrespective of the usual reporting period due date.

(b) This return and remittance should be sent to the Emergency Transportation Tax Bureau with Forms NJTT-2102 and NJTT-2103, due at the same time, as required by Section 18.25 of this Chapter.

(c) An employer who has temporarily ceased to pay wages, including an employer engaged in seasonal activities, shall continue to file returns but shall enter on the face of the return the date of the last payment of wages and the date when he expects to resume making payments.

Statutory References

As to withholding return, see N.J.S.A. 54:8A-49.

18:10-18.24 Correcting mistakes in withholding

(a) If the correct amount of tax is not paid to the Division of Taxation, proper adjustment may be made on the first return, filed after the error is discovered. An employer who has made an overpayment of tax because of a computation error in the preparation of the return or remittance must file an application for refund on Form NJTT-2377, Application for Refund of Overpayment of New Jersey Emergency Transportation Tax, if the mistake cannot be adjusted by an offset in a return for a subsequent period of the same calendar year.

(b) If no tax, or less than the correct amount of the tax, is deducted from any wage payment, the employer is authorized to deduct the amount of the undercollection from later payments to the employee. However, the employer is liable for any underpayment. Reimbursement is a matter for settlement between the employer and the employee.

(c) If, in any filing period, more than the correct amount of tax is deducted from any wage payment, the overcollection shall be repaid to the employee. The employer must obtain from the employee and keep as part of his records a written receipt showing the date and amount of the repayment. Every overcollection not repaid to and receipted for by the employee must be reported and paid to the Division of Taxation with the return for the filing period in which the overcollection was made.

18:10-18.25 Filing annual reconciliation of tax withheld and copies of wage and tax statements

(a) Form NJTT-2103, Reconciliation of New Jersey Tax Withheld, Employer's Annual Return, must be filed by the employer with the New Jersey Emergency Transportation Tax Bureau, P.O. Box 1686, Trenton, New Jersey 08625 on or before February 28 following the close of the calendar year, together with all wage and tax statements for the year (copy No. 4 of Form NJTT-2102) and a list (preferably in the form of an adding machine tape or account machine listing) of the amounts of tax withheld as shown on Form NJTT-2102. Form NJTT-2103 and the accompanying Forms NJTT-2102 are to be transmitted separately from the employer's return (Form NJTT-2101), except in the case of an employer who discontinued business or permanently

ceased to pay wages and filed a "Final Return" as provided in Section 18.23 (Final returns) of this Chapter.

(b) If an employer permanently discontinues or sells his business or permanently ceases to pay wages under his current identification number, Form NJTT-2103 and Form NJTT-2102 shall be filed within 30 days after the end of the month in which the business or payment of wages ceased and shall be accompanied by the adding machine tape or accounting machine listing referred to in subsection (a) of this Section. The last return must be marked "Final Return".

(c) Where the number of Form NJTT-2102 is substantial, they may be forwarded to the Emergency Transportation Tax Bureau in packages of convenient size. When this is done the packages should be identified with the name and account number of the employer and consecutively numbered. Form NJTT-2103 should be placed in package number one and the number of packages should be indicated on such form.

(d) If an employer's total payroll consists of a number of separate units of establishments, the Form NJTT-2102 may be assembled accordingly and a separate list submitted for each unit or establishment. In this case, a summary list should be prepared, the total of which should agree with the corresponding entry made on Form NJTT-2103.

(e) Any employee copies of Form NJTT-2102 which, after reasonable effort, cannot be delivered to employees should be transmitted with the Employer's Return, Form NJTT-2101 due during the month of July of the next calendar year, or with the employer's final return if filed earlier. Any undeliverable NJTT-2102 Forms submitted to the Emergency Transportation Tax Bureau should be accompanied by a letter stating that they are submitted because they could not be delivered to the employees involved. In lieu of transmitting the undeliverable forms with his return, an employer who issues Form NJTT-2102 from branch establishments may, if he so desires, have the branch establishments send the undeliverable forms to the Emergency Transportation Tax Bureau.

18:10-18.26 Use of pre-addressed forms

(a) Employers should use the envelopes and pre-addressed forms furnished to them by the Emergency Transportation Tax Bureau for the purpose of filing their returns.

(b) Where this is impractical, the employer must exercise extreme care to show the employer's name and identification number exactly as they appeared on previous related forms.

(c) If an employer's pre-addressed forms are lost or damaged so as to require replacement, a request for duplicate forms listing the employer's name and identification number should be sent to the New Jersey Emergency Trans-

portation Tax Bureau, P.O. Box 1686, Trenton, New Jersey 08625.

(d) An employer required to file a return who does not have a pre-addressed form should use Form NJTT-2101M which may be obtained from the Emergency Transportation Tax Bureau.

18:10-18.27 New Jersey employer's identification number

(a) Each employer will be identified by a New Jersey Employer Identification Number. This identification number will be the same as the Federal Identification Number in every case where the employer has been assigned such a number by the District Director of Internal Revenue. The standard identification number is a nine-digit number separated as follows: 00-0000000. Every employer must have only one identification number.

(b) If an employer has been assigned a temporary New Jersey identification number and later obtains a Federal number he must notify the Emergency Transportation Tax Bureau of the Federal number received and use the Federal number on all subsequent New Jersey tax withholding purposes.

18:10-18.28 Power to require early return and payment of tax withheld

(a) The Division of Taxation may by notice served upon an employer require the employer to make a return and pay to it the tax deducted and withheld by the employer at any time or from time to time, whenever the Division of Taxation deems this action necessary for the protection of revenues.

1. The Division of Taxation may include in such notice a direction requiring the employer to remit such taxes to the Division of Taxation or as provided in subsection (b) of this Section;

2. The notice provided for in this subsection shall be served personally or by registered or certified mail.

(b) Whenever any employer fails to collect, truthfully account for, pay over the tax, or make returns of the tax as required by this Subchapter, the Division of Taxation may serve a notice requiring the employer to collect the taxes which become collectible after service of this notice. The Director may require the employer to deposit these taxes within the time specified in the notice in a bank approved by the Division of Taxation, in separate account in trust for and payable to the Division of Taxation, and to keep the amount of the tax in an account until payment over to the Division of Taxation. The notice shall remain in effect until a notice of cancellation is served by the Division of Taxation.

Statutory References

As to withholding return, see N.J.S.A. 54:8A-49.

18:10-18.29 Employer's liability for withheld taxes

(a) Every employer required to deduct and withhold tax from wages of an employee under this Subchapter is liable for the payment of the tax whether or not it is collected from the employee by the employer. For purposes of assessment and collection, any amount required to be withheld and paid over to the Division of Taxation, and any additions to tax, penalties and interest with respect thereto shall be considered the tax of the employer. (See Subchapter 20 (Penalties) of this Chapter as to additions to tax and civil penalties.)

(b) Any amount of tax withheld shall constitute a special fund in trust for the Division of Taxation.

(c) No employee shall have any right of action against his employer in respect to any moneys deducted and withheld from his wages and paid over to the Division of Taxation in compliance or in intended compliances with this Subchapter.

Statutory References

As to employer's liability for withheld taxes, see N.J.S.A. 54:8A-50.

18:10-18.30 Employer's failure to withhold

(a) If an employer fails to deduct and withhold the tax as required under this Subchapter, and, thereafter, the tax against which the tax may be credited is paid, the tax required to be deducted and withheld shall not be collected from the employer.

(b) This payment does not, however, operate to relieve the employer from liability for penalties, interest or additions to the tax applicable in respect to the failure to deduct and withhold. The employer will not be relieved under this provision from his liability for payment of the tax required to be withheld unless he can show that the tax against which the tax required to be withheld under this Subchapter may be credited has been paid. (See Sections 18.4 through 18.8 of this Chapter relating to employer's liability for tax).

Statutory References

As to failure of employer to deduct and withhold tax, see N.J.S.A. 54:8A-51.

SUBCHAPTER 19. ASSESSMENT

18:10-19.1 Limitation on assessment

(a) *General provisions.* Except as otherwise provided herein, the amount of tax imposed, by the Act, including any deficiency or reassessment thereof, shall be assessed within 3½ years from the date of the filing of the return. When the return omits an amount greater than 25 per cent of the gross income or capital reported, and which should have been included, the determination shall be made within 6½ years after the return was made.

(b) *Time return deemed filed.* For purposes of the Act, a return for the tax imposed by the Act, filed before the last day prescribed by law for the filing of the return, shall be considered as filed on the last day.

Example:

Mr. A, a calendar year taxpayer, files his return on March 1 instead of April 15; in determining the limitation for assessment, the return will be deemed to have been filed on April 15.

(c) *Exceptions.*

1. *False return.* In the case of a willfully false or fraudulent return with the intent to evade the tax, the tax may be assessed at any time:

2. *Willful attempt to evade tax.* In case of a willful attempt in any manner to defeat or evade the tax imposed by the Act, the tax may be assessed, at any time;

3. *No return.* In the case of a failure to file a return, the tax may be assessed at any time.

(d) *Extension by agreement.* The time prescribed by subsection (a) for the assessment of the tax may, prior to the expiration of this time, may be extended for any period of time agreed upon in writing by the taxpayer and the Director. The extension shall become effective when the agreement has been executed by both parties. The period agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.

Statutory References

As to determination amount of tax due, see N.J.S.A. 54:8A-55.

18:10-19.2 Deficiency assessment notice; interest

(a) *Notice.* Upon the filing of a final return, the Director shall, if the same be deemed necessary, cause an audit, investigation or reaudit to be made. If it is determined that a deficiency exists with respect to the payment of the tax, the taxpayer shall be given notice of the assessment or reassessment stating the amount of the deficiency determined including a demand for immediate payment.

(b) *Interest.*

1. In a case where a deficiency assessment has been determined, there shall be added to the assessment or reassessment interest at the rate of one per cent per month or any part thereof from the date the tax was due (without regard to any extension) to the date of actual payment;

2. *Exception.* In a case where a deficiency has been assessed against a taxpayer and the Director is satisfied that said deficiency was not due to fraud or willful evasion, any charge for interest in excess of one half of one per cent per month may be waived or remitted.

Statutory References

As to deficiency in payment and interest, see N.J.S.A. 54:8A-53; N.J.S.A. 54:49-6, 11.

18:10-19.3 Protest findings or assessments, findings, orders, investigations, appeals

(a) If any taxpayer shall be aggrieved by any finding or assessment of the Director, he may, within 30 days of the giving of the Notice of Assessment or finding file a protest in writing, signed by himself or his duly authorized agent, under oath which shall set forth the reason, therefor and may request a hearing.

(b) The Director shall grant a hearing to the taxpayer if the same shall be requested.

(c) The Director may make an order confirming, modifying, or vacating any such finding or assessment.

(d) The filing of any protest shall not abate the penalties for non-payment of the tax, nor shall it 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.

(e) The time for appeal or review shall not be extended by the filing of any protest unless a hearing is requested and then the time in which an appeal may be taken shall be extended only for the period between the filing of the protest and the final determination by the Director.

Statutory References

As to protests by taxpayers of Director's findings, see N.J.S.A. 54:49-18.

SUBCHAPTER 20. PENALTIES

18:10-20.1 Civil penalties

(a) *Failure to file return.* In case of failure to file a return required under the Act on or before the date prescribed for filing (determined without regard to any extension of time for such filing), there shall be added to the tax and made a part of the tax, a penalty of \$2.00 for each day of delinquency, unless the failure to file the return within the prescribed time is shown to the satisfaction of the Director to be due to reasonable, excusable cause and not willful neglect.

(b) *Failure to pay tax.* If any part of the tax remains unpaid after the date prescribed for payment, there shall be added to the tax and made a part of the tax, a penalty of five per cent of any unpaid balance of the tax due unless the failure to pay the tax within the prescribed time is shown to the satisfaction of the Director to be due to reasonable, excusable cause and not willful neglect. In addition, there shall be added to the tax and made a part of the tax, interest at the rate of one per cent per month from the date the tax is due until the date of actual payment.

(c) For purposes of subsections (a) and (b) of this Section a fraction of a month shall constitute a whole month in the calculation of any interest added to the tax.

(d) *Showing of reasonable, excusable cause.* A taxpayer who wishes to avoid the addition to the tax for failure to file a return or pay the tax when due must make an affirmative showing of all facts alleged as a reasonable, excusable cause, or both, for his failure to file or pay on time in the form of a written statement containing a declaration that it is made under penalties of perjury. This statement should be filed with the Director. If the Director determines that the delinquency was due to a reasonable, excusable cause, or both, and not to willful neglect, the addition to the tax may be entirely or partially abated or remitted.

Statutory References

As to penalties and administration, see N.J.S.A. 54:8A-53, 55.

18:10-20.2 Criminal penalties

(a) *Willful failure to file.* Any taxpayer required under the Act to file a return who willfully fails to file a return, or files, gives, or causes to be given any return, representation, information, testimony or statement required or authorized by the Act, which violates any requirement imposed by the Act or any rule or regulation herein shall be guilty of a misdemeanor and upon conviction shall be fined not more than \$1,000 or imprisoned for not more than one year or both.

(b) The penalty provided for in subsection (a) of this Section shall be in addition to all other penalties provided by the Act.

Statutory References

As to criminal penalties, see N.J.S.A. 54:52-1.

18:10-20.3 Penalty a personal debt

(a) Any tax, fee, interest and penalty imposed by the Act shall be a personal debt of the taxpayer as of the date when the tax is due and recoverable in any court of competent jurisdiction by the State.

(b) The debt shall not be a lien on the personal or real property of the taxpayer until the entry of a final judgment or the filing of a certificate of debt as provided by law.

Statutory References

As to a penalty being a personal debt, see N.J.S.A. 54:8A-44.

SUBCHAPTER 21. AGREEMENTS

18:10-21.1 General provisions

(a) The Director may enter into a written agreement with any taxpayer regarding the liability of the taxpayer for any tax, fee, penalty or interest imposed by the Act.

(b) The execution of an agreement in writing shall be final and conclusive, and except upon a showing of fraud, malfeasance or misrepresentation of a material fact, the case shall not be reopened as to the matters agreed upon nor shall the agreement be modified by any officer, employee or agent of this State.

(c) In the event any suit, action or proceeding is instituted the agreement, or any determination, assessment, collection, payment, abatement, refund or credit made pursuant to the agreement, shall not be annulled, modified, set aside or disregarded.

Statutory References

As to agreements, see N.J.S.A. 54:8A-43.

18:10-21.2 Taxpayer's agreement constitutes assignment to the State; refund; co-operation

(a) Every resident of this State who is subject to tax in some other jurisdiction for income and gains derived from sources within the other jurisdiction, which grants to residents of this State a credit substantially similar to that allowed to nonresidents of this State (See Section 5.4 (Non-resident tax credit) of this Chapter), and who is subject to tax under the Act and who has made payment on the estimated amount of the tax, or who has, in the jurisdiction, been subject to deduction and withholding of money, otherwise payable to him, for the purpose or crediting the same to the payment of the tax, shall be entitled to satisfy his obligation to pay the tax due under the Act by entering into an agreement with the Division in such form and containing such provisions as may be deemed necessary by the Director.

(b) This shall constitute an assignment and transfer to the State of New Jersey of the chose in action consisting of his claim for refund of moneys so paid or deducted and withheld, as well as an agreement to pay to the Division of Taxation so much of any refund as may be received by him as equals the tax under the Act, within the period, to be not longer than one month after receipt by him of any such refund. For said purposes he shall execute, deliver and file the document or documents, in such forms, in such place or places and at such times as may be provided by the Division of Taxation.

(c) Upon the making of any such assignment the State of New Jersey shall become the owner and holder of any such claims and shall be entitled to assert the same in its own right and as its own property, whether it asserts the same in its own name or in the name of the assigning taxpayers or otherwise.

(d) In the event that the amount so paid or deducted and withheld, and received by the State of New Jersey pursuant to such agreement, shall exceed the amount necessary to satisfy the obligation of taxpayer under the Act, the excess shall be repaid to taxpayer upon application in accordance with procedures and forms as may be provided by the Division of Taxation.

Statutory References

As to assignment of claim for refund of money, see N.J.S.A. 54:8A-19.

18:10-21.3 Obligation of taxpayer

(a) Every taxpayer exercising any option under Section 21.2 (Taxpayer's agreement constitutes assignment to the State; refund; co-operation) of this Chapter shall be obliged to co-operate fully in any proceedings which may be taken for recovery of the claim for refund, and for that purpose shall:

1. Execute and deliver such papers, affidavits, forms or other documents;
2. Appear and be available to give testimony at such place or places and at such time or times;
3. Furnish such information;
4. Permit the institution of proceeding or proceedings in his name or otherwise, but at the sole cost and expense of the State;
5. Do all other things, as the Division of Taxation shall deem appropriate or desirable for the effective recovery of any sum due and payable on such claim.

(b) The provision of this Section and Section 21.2 (Taxpayer's agreement constitutes assignment to the state; refund; cooperation) of this Chapter shall not apply to any tax, or to any payment or deduction and withholding for the satisfaction of the same, imposed by any Federal law.

(c) For each tax year for which the Commissioner of Transportation, pursuant to authority of N.J.S.A. 54:8A-5, certifies to the State Treasurer his designation of a critical area state, in addition to the State of New Jersey, any resident of this State, or any class of residents of this State who is subject to the tax imposed by the Act, who is liable for tax upon the same income under the law imposed for such tax year by such other critical area state and who is thereby entitled to the credit provided for in Reg. 18:10-21(b) against the tax otherwise due under the Act, provided said credit is substantially sufficient to offset the

taxes imposed by the Act, is relieved from the requirement to make any return under the Act for such tax year.

As amended, R.1972.d.82, effective May 1, 1972.
See: 4 N.J.R. 78(a), 4 N.J.R. 142(c).

Statutory References

As to assignment of claim for refund of money paid or withheld in another jurisdiction, see N.J.S.A. 54:8A-19.

SUBCHAPTER 22. APPEALS

18:10-22.1 General provisions

(a) Within three months from the date of any decision, order, finding, assessment or action made by the Director pursuant to the provisions of the Act, any aggrieved taxpayer may appeal therefrom to the Division of Tax Appeals by filing a petition in the manner and form prescribed by the Division of Tax Appeals.

(b) For purposes of appeal the date of any decision, order, finding, assessment or action made by the Director shall be the date of mailing as stamped on the decision, order, finding, assessment or action.

(c) Any taxpayer who appeals to the Division of Tax Appeals is required to give security approved by the Director conditioned to pay the tax levied with interest and costs, if the same remains unpaid.

Statutory References

As to appeals, see N.J.S.A. 54:51-1.

18:10-22.2 Security to stay collection

No appeal shall operate as a stay of collection or enforcement by an entry of judgment of any tax, unless an order for the stay of collection or entry of judgment is made by the Division of Tax Appeals, and then only after the taxpayer has furnished security for the payment of the tax to the Director and the security has been approved.

Statutory References

As to security to stay collection, see N.J.S.A. 54:51-1.

18:10-22.3 Appeal to the Appellate Division

Any taxpayer aggrieved by the judgment or order of the Division of Tax Appeals respecting any matter arising under the Provisions of the Act may file an appeal by instituting a proceeding in lieu of prerogative writ to the Appellate Division of the Superior Court in the same manner as other judgments of the Division of Tax Appeals.

Statutory References

As to an appeal to Appellate Division of Superior Court, see N.J.S.A. 54:51-1.

SUBCHAPTER 23. REFUNDS

18:10-23.1 General provisions

(a) Any taxpayer, at any time within two years after the payment of any original or additional tax assessed against him, may file with the Director a claim for refund in the form of a statement under oath setting forth in detail, the grounds therefor and outlining all pertinent circumstances relating thereto.

(b) No claim for refund shall be required or permitted to be filed with respect to a tax paid, after protest has been filed with the Director or after proceedings on appeal have been commenced until such protest or appeal has been finally determined.

Statutory References

As to refunds, see N.J.S.A. 54:49-14.

18:10-23.2 Payment of refunds; rejection of claims

(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 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.

(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.

Statutory References

As to payment of refunds, see N.J.S.A. 54:49-15.

18:10-23.3 Refund of erroneous payments

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 payment, upon making a record in writing of his reason, certify to the State Treasurer that the taxpayer is entitled to a refund. The Treasurer shall then authorize the payment from the appropriation for such purpose.

Statutory References

As to refund of erroneous payments, see N.J.S.A. 54:49-16.

SUBCHAPTER 24. TRANSPORTATION FUND

18:10-24.1 Use of fund

All moneys which shall be received by way of tax or by way of moneys deducted and withheld under the Act, shall be kept in a special fund known as the Transportation Fund, separate and apart from all other funds. The moneys in the fund at any time shall, within the limits of available appropriations made by law from time to time, be used for one or more of the following purposes:

1. To meet the expenses of administering the provisions of the Act and of this Subchapter and the expenses of any proceedings or actions involving the same;

2. To defray the cost of, or to provide financing by way of advances, loans or otherwise, for projects and programs to meet transportation problems, whether the transportation be by motor vehicle, rail or rapid transit, or by any other mode of vehicle of transportation whatever, when such project or program includes the transportation of persons or property interstate, between New Jersey and the source state, from which states taxpayers derive income or gain subject to tax under the Act;

3. To furnish such other facilities, services or other benefits for which the class of taxpayers covered by the Act will be the major eligible recipient and for which the tax imposed by the Act may reasonably be exacted, as may be authorized by law from time to time;

4. To make payment of refunds to taxpayers entitled to receive the same;

5. To make payment to another state of moneys deducted and withheld from its residents subject to tax hereunder in lieu of and in satisfaction of credits to which these residents may be entitled under the reciprocity clause contained in the Act, whenever that state so provides by or pursuant to its law.

Statutory References

As to transportation fund, see N.J.S.A. 54:8A-20.

18:10-24.2 Limitation on the use of funds in transportation fund

Funds in the Transportation Fund may not be used for any purpose except upon:

1. Presentation to the Attorney General of an itemization of the purposes for which funds are proposed to be used, stating the amount of each such proposed expenditure. The presentation shall be made by:

i. The Director of the Division of Taxation, in the case of any purpose other than those described in subsection (a) of Section 24.1 (Use of fund) of this Chapter; or

ii. The State Highway Commissioner in the case of any purpose described in subsection (a) of Section 24.1 (Use of fund) in this Chapter;

2. Transmittal of itemization by the Attorney General to the State Treasurer, with a certification by the Attorney General endorsed thereon that the purpose for which funds are therein proposed to be used are within the terms and intent of the Act and are otherwise in compliance with law.

Statutory References

As to purposes of Transportation Fund, see N.J.S.A. 54:8A-20.

18:10-24.3 Balances accumulated as an endowment fund; use

(a) So much of the moneys as may be in the Transportation Fund at any time and as may be in excess of the amounts needed to meet anticipated uses thereof pursuant to the Act during any fiscal year, shall be held and accumulated as an endowment fund.

(b) This money may be invested and reinvested from time to time, in the same manner as any State funds may be invested, and the income, as well as so much of the principal as may be necessary from time to time, shall be applied to the purposes authorized for the said Transportation Fund, within the limits of available appropriations.

Statutory References

As to Endowment Fund, see N.J.S.A. 54:8A-21.

18:10-24.4 Refund to taxpayer upon unauthorized use of fund; formula for computing amount

(a) In the event that any part of the moneys in the Transportation Fund shall, at any time, be applied to a purpose or purposes other than one set forth in the Act, every taxpayer who shall have been subject to the tax imposed by the Act and who shall have paid the same, shall thereupon be entitled to a refund, or to a credit against taxes subsequently accruing, equal to his pro rata share of the amount so applied, disregarding any amounts less than \$1.00.

(b) Upon application made within one year after it shall be determined that any such moneys have been so applied, in such form and by such procedure as may be required by the Director, the Division of Taxation shall determine the pro rata share of each taxpayer according to the following formula:

1. Multiply the total amount of taxes paid by the taxpayer for all taxable years from its enactment hereof to

July 1 of the year in which the right to refund arises under this Section times,

2. The dollar amount of the moneys determined to have been applied to a purpose other than one set forth in the Act; then

3. Divide the product by the total amount paid by all taxpayers during the same period; then

4. From the quotient strike off any amount less than \$1.00 to obtain the sum to be refunded or credited.

(c) If the amount so applied to another purpose shall have been determined by a court of competent jurisdiction, the amount so determined shall be used in the computation, otherwise, the division shall make determination of the amount.

Statutory References

As to unauthorized use of fund, see N.J.S.A. 54:8A-22.

SUBCHAPTER 25. POWERS OF DIRECTOR

18:10-25.1 Power to delegate

(a) The Director is authorized to delegate his functions under the Act to any officer or employee of the Division of Taxation and such of the powers given him under the Act as he may deem necessary to carry out efficiently the provisions of the Act.

(b) Any person or persons to whom a power of the Director has been delegated shall have and may exercise all of the power and perform all of the duties herein conferred and imposed upon the Director.

Statutory References

As to the exercise of Director's powers, see N.J.S.A. 54:8A-56.

18:10-25.2 Power to make regulations

The Director is empowered to make, adopt and amend rules and regulations deemed appropriate to carry out the purposes of the Act.

Statutory References

As to authority to make regulations, see N.J.S.A. 54:8A-55.

18:10-25.3 Relief of requirements of nonresidents

(a) If it shall appear to the satisfaction of the Division of Taxation based upon an opinion of the Attorney General of this State, that any person whose wages, salaries or commissions are subject to deduction and withholding are liable for tax upon the same income under the law of the state of which he is a resident, under circumstances such as will entitle him to a reciprocity credit under the Act sufficient to

offset all taxes imposed hereunder, and that such state makes payment to the Division of Taxation of amounts deducted and withheld on account of earnings and gains derived by residents of this State from sources within such state and subject to tax under the Act, the Division of Taxation may relieve residents of such state from being required to make any return under the Act.

(b) Upon the filing of such proofs as the regulations may require, the Division of Taxation may relieve the employer of such taxpayers from the requirement to deduct and withhold any amount otherwise required by the Act, for such period as the conditions stated in subsection (a) of this Section continue to be satisfied.

(c) The Division of Taxation may, notwithstanding the existence of the above conditions, continue to require the making of the return and the deduction and withholding of these amounts whenever it determines such action is appropriate or reasonably required to insure compliance with the Act or whenever an appropriate official of another state certifies that the state desires that such deduction and withholding be continued.

(d) The Division of Taxation may consider amounts withheld under the provisions of the Act as withheld for the benefit of the state of which such persons are resident but such amounts shall not be paid over to such state unless the state has complied with the provisions of the Act and is thereby entitled to these amounts. Any amounts withheld, however, may be expended for any of the purposes specified in Sections 24.1 (Use of fund) and 24.2 (Limitations on fund) of this Chapter.

Statutory References

As to reciprocity credit and relief from withholding, see N.J.S.A. 54:8A-52.

SUBCHAPTER 26. ADMINISTRATION OF THE ACT

18:10-26.1 General provisions

The administration, collection and enforcement of the tax imposed by the Act is to be in the Division of Taxation in the Department of the Treasury.

Statutory References

As to administration of the Act, see N.J.S.A. 54:8A-55.

18:10-26.2 Uniform procedure law applicable

The State Tax Uniform Procedure Law (N.J.S.A. 54:49-1 et seq.) shall govern the administration, collection and enforcement of the tax imposed by the Act, to the extent that the provisions in such law are not inconsistent with any provisions of the Act.

Statutory References

As to applicability of State Tax Uniform Procedure Law, see N.J.S.A. 54:8A-54.

18:10-26.3 Attorney General to institute suit; court to recognize and enforce claims of other states; use of words

(a) At the request of the Division of Taxation, the Attorney General may bring suit, in the name of this state, in the appropriate court of any other state to collect any tax legally due this state under the Act.

(b) The courts of this State shall recognize and enforce liabilities for taxes lawfully imposed by any other state, upon incomes, which extends a like comity to this State, and the duly authorized office or any such state may sue for the collection of this tax in the courts of this State. A certificate by the Secretary of State of the other state that an officer suing for the collection of the tax is duly authorized to collect the same shall be conclusive proof of his authority.

(c) For the purpose of this Section the words "tax" and "taxes" shall include interest and penalties due under the Act, and liability for such interest or penalties or both, due under a taxing statute of another state shall be recognized and enforced by the courts of this State to the same extent that the laws of the other state permit the enforcement in its courts of liability for interest or penalties or both, due under the Act.

Statutory References

As to actions for collection of tax, see N.J.S.A. 54:8A-46.