



JOINT CIRCULAR

STATE OF NEW JERSEY

DEPARTMENT OF THE TREASURY

NO.: 20-11-OMB/TAX

ORIGINATING AGENCIES:
OFFICE OF MANAGEMENT AND BUDGET
DIVISION OF TAXATION

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EFFECTIVE
DATE: IMMEDIATELY

EXPIRATION
DATE: INDEFINITE

SUPERSEDES: 16-09-OMB/TAX

SUBJECT: STATE VENDOR SET-OFF FOR STATE TAX

ATTENTION: DIRECTORS OF ADMINISTRATION AND CHIEF FISCAL OFFICERS

FOR INFORMATION CONTACT: PETER RAPETTI

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I. INTRODUCTION

In accordance with New Jersey P.L. 1995, c 159, §1, effective January 1, 1996 and codified at N.J.S.A. 54:49-19, "Whenever any taxpayer under contract to provide goods or services to the State of New Jersey or its agencies or instrumentalities, and including the legislative and judicial branches of State government, or under contract for construction projects of the State of New Jersey or its agencies or instrumentalities, and including the legislative and judicial branches of State government, is entitled to payment for the goods or services or on that construction project and at the same time, the taxpayer is indebted for any State tax, the Director of the Division of Taxation shall seek to set-off so much of that payment as shall be necessary to satisfy the indebtedness." Furthermore, in accordance with P.L. 1995, c. 159, §2, codified at N.J.S.A. 54:49-20, "Notwithstanding any provision of law to the contrary, whenever any partnership or S corporation under contract to provide goods or services or construction projects to the State of New Jersey or its agencies or instrumentalities, including the legislative and judicial branches of State government, is entitled to payment for those goods or services or construction projects at the same time a partner or shareholder of that entity is indebted for any State tax, the director shall seek to set-off that partner's or shareholder's share of the payment due the partnership or S Corporation. The amount set-off shall not allow for the deduction of any expenses or other deductions which might be attributable to the partner or shareholder subject to set-off under this act." The Director of the Division of Taxation, in consultation with the Director of the Office of Management and Budget in the Department of the Treasury, has established procedures and methods to effect a set-off which are included in the Standard Terms and Conditions contained in all State contracts.

II. REQUIREMENTS

- A. When an indebtedness for State tax has been reported, the Department of the Treasury, Division of Taxation, shall notify each provider of goods or services, or the contractor or subcontractor of a construction project under contract, of that indebtedness. The Director of the Division of Taxation also shall give to the taxpayer notice of the set-off which the State will withhold to satisfy the indebtedness and provide an opportunity for a hearing within thirty (30) days of such notice under the procedures for protests established under N.J.S.A. 54:49-18.

No requests for conference, protest or subsequent appeal to the Tax Court from any protest permitted under N.J.S.A. 54:59-19 shall stay the collection of the indebtedness. Interest that may be payable by the State to the taxpayer, pursuant to P.L. 1987, c. 184 (N.J.S.A. 52:32-35), shall be stayed.

The Division of Taxation may initiate procedures to set-off the tax debt of a specific vendor when the tax debt is self-reported, or the expiration of ninety (90) days after either the issuance by the Division of a notice and demand for payment of any State tax owed by the taxpayer or the issuance by the Division of a final determination on any protest filed by the taxpayer against an assessment or final audit determination. (See N.J.S.A. 54:49-18.)

- B. Notice of the provisions of N.J.S.A. 54:49-19 et seq. must be included in all Requests for Proposals and in all contracts executed by all State agencies, authorities and instrumentalities. The Department of the Treasury, Division of Purchase and Property, will continue to insert the notice of the provisions of N.J.S.A. 54:49-19 in all Requests for Proposals and all contracts which the Division issues.
- C. Department administrators must ensure that all employees involved directly or indirectly with the procurement process, including directors of administration, fiscal officers, program administrators, etc., are cognizant of the established procurement procedures prior to entering into any transaction with a vendor that results in the commitment of funds. A contract entered into by the State, its agencies or instrumentalities with a provider of goods or services, or a contractor or subcontractor of a construction project after January 1, 1996, shall contain a notice of the provisions of N.J.S.A. 54:49-19.

III. CONTENT OF NOTICE TO STATE VENDORS

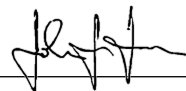
The following language must be included in all vendor contracts:

NOTICE TO ALL STATE VENDORS: SET-OFF FOR STATE TAX

Pursuant to N.J.S.A. 54:49-19, effective January 1, 1996, and notwithstanding any provision of the law to the contrary, whenever any taxpayer, partnership or S corporation under contract to provide goods or services or construction projects to the State of New Jersey or its agencies or instrumentalities, including the legislative and judicial branches of State government, is entitled to payment for those goods or services at the same time a taxpayer, partner or shareholder of that entity is indebted for any State tax, the Director of the Division of Taxation shall seek to set off that taxpayer's or shareholder's share of the payment due the taxpayer, partnership, or S corporation. The amount set off shall not allow for the deduction of any expenses or other deductions which might be attributable to the taxpayer, partner or shareholder subject to set-off under this act. The Director of the Division of Taxation shall give notice of the set-off to the taxpayer and provide an opportunity for a hearing within 30 days of such notice under the procedures for protests established under R.S. 54:49-18. No requests for conference, protest, or subsequent appeal to the Tax Court from any protest under this section shall stay the collection of the indebtedness. Interest that may be payable by the State, pursuant to P.L. 1987, c.184 (c.52:32-32 et seq.), to the taxpayer shall be stayed.



David Ridolfino, Acting Director
Office of Management and Budget



John Ficara, Acting Director
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