

candidate to be elected must receive a majority of the total votes cast by the seated delegates or their alternates **to be elected**. In the event no candidate receives a majority, the candidate who has received the least number of votes shall be eliminated. This procedure shall be repeated on each succeeding ballot until one candidate has received a majority of the total vote.

(p) The trustee must be employed in or retired from a county in Group A, Group B or Group C. Members elected shall serve three-year terms. In the event an active or retired trustee elected by the membership is unable to finish the term, the vacancy shall be filled in the same manner and in the same group as the departing trustee[, as set forth in N.J.S.A. 18:66-56]. The term of this position shall be the remainder of the unexpired term.

(q) Only delegates with proper identification will be admitted to [the main floor of] the convention.

(r) [Alternates] **Delegates, alternates** and visitors shall be seated in a specified area.

(s) The secretary of the convention will conduct a roll call of the delegates. Alternates will be seated in the place of respective county absentee delegates in the order in which they are listed by the secretary of the county meeting[;].

[1. The election of the member-trustee shall require a majority vote among the delegates actually seated in the convention.]

(t)-(w) (No change.)

TREASURY — TAXATION

(a)

DIVISION OF TAXATION

Organization of the Division of Taxation Relaxation of Rules

Proposed New Rule: N.J.A.C. 18:1-2.6

Authorized By: Michael Bryan, Acting Director, Division of Taxation.

Authority: N.J.S.A. 54:50-1.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2011-039.

Submit comments by April 8, 2011 to:

Mitchell Smith
Assistant Chief, Regulatory Services Branch
Division of Taxation
50 Barrack St
PO Box 269
Trenton, NJ 08695-0269

The agency proposal follows:

Summary

Proposed new N.J.A.C. 18:1-2.6 offers a procedure to allow for the relaxation, in certain instances, of the requirements of Division of Taxation regulations. Proposed subsection (a) provides that the Director of the Division of Taxation may, in his or her discretion, and if consistent with taxation laws, relax the strict application of any administrative or procedural requirements of Title 18 of the New Jersey Administrative Code when necessary and in the public interest, upon a showing of undue hardship, if the upon a finding that strict adherence to such requirements would result in unfairness or injustice, and that the granting of a waiver is consistent with the purposes and objectives of the applicable sections of Title 54 of the New Jersey Statutes Annotated, or with the core objectives of the Division. Proposed subsection (b) provides that the Director of the Division of Taxation shall not relax any administrative or procedural requirements if such requirements are imposed by applicable State or Federal statutes, or by applicable decision, or decree of a court of competent jurisdiction. Proposed subsection (c) provides that a request for a waiver must be submitted in writing to the Director and shall

include a statement of the type and degree of hardship that would occur if a waiver is not granted and supporting documentation.

Because the Division has provided a 60-day comment period on this notice of proposal, this notice is excepted from the rulemaking calendar requirements pursuant to N.J.A.C. 1:30-3.3(a)5.

Social Impact

Pursuant to Executive Order No. 2 (2010), paragraph c., State agencies have been called upon to adopt procedures to allow strict compliance waivers. Specifically, agencies are to prepare and publish policies describing the circumstances under which waivers from strict compliance with agency rules would be granted. This policy, as explained in the Executive Order, is intended to recognize that “rules can be conflicting or unduly burdensome.” The proposed new rule will comply with this request by allowing for a waiver, or “relaxation,” of a rule, provided that granting a waiver would not conflict with State or Federal statutes or court decrees or the core mission of the Division. The intent of the proposed new rule is to contribute to improving the business climate while at the same time improving compliance with tax procedures in general.

Economic Impact

The proposed new rule is not anticipated to have an immediate specific economic impact. However, the proposed new rule to adopt a procedure for relaxation of rules is derived from Governor Christie’s Administration “Common Sense Principles” as specified in Executive Order No. 2 (2010). As explained in Executive Order No. 2 (2010), the Common Sense Principles are intended to create “an environment that is an attractive venue for entities doing, or seeking to do, business in the State.” At the same time, the Executive Order suggests that any relaxation of rules should not conflict with the core mission of the agency. Since the core mission of the Division of Taxation is to collect taxes properly owing to the State, the Division anticipates that the proposed new rule would apply only in rare instances, as specified in the proposed new rule, where tax collections would not be jeopardized.

Federal Standards Statement

The proposed new rule does not contain any requirement that exceeds those imposed by Federal law. The proposed new rule represents an administrative policy of the Division of Taxation that is not subject to any Federal regulatory requirements or standards.

Jobs Impact

The proposed new rule is not expected to have any effect on jobs in the State.

Agriculture Industry Impact

The proposed new rule will have no impact on the agriculture industry in New Jersey.

Regulatory Flexibility Statement

The proposed new rule will apply to small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., as well as to businesses employing more than 100 people full-time. However, the proposed new rule does not impose any new reporting, recordkeeping or other compliance requirements on small businesses. To the contrary, the proposed new rule provides a mechanism to relieve taxpayers in some instances from regulatory tax compliance requirements. Taxpayers will not require professional services to comply with the proposed new rule; however, taxpayers may wish to utilize professional services to ascertain whether the proposed new rule would be relevant to their own situation.

Smart Growth Impact

The Division anticipates that the proposed new rule will have no impact on smart growth in New Jersey or on the implementation of the New Jersey State Development and Redevelopment Plan.

Housing Affordability Impact

The proposed new rule would not result in a change in the average costs associated with housing. The proposed new rule would have no impact on any aspect of housing because the proposed new rule deals with the relaxation of Division of Taxation rules.

Smart Growth Development Impact

The proposed new rule would not result in a change in the housing production within Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan. This is because the proposed new rule has nothing to do with housing production, either within Planning Areas 1 or 2, within designated centers, or anywhere in the State of New Jersey. The new rule deals with the relaxation of Division of Taxation rules.

Full text of the proposed new rule follows:

18:1-2.6 Relaxation of rules

(a) The Director of the Division of Taxation may, in his or her discretion, and if consistent with taxation laws, relax the strict application of any administrative or procedural requirements of Title 18 of the New Jersey Administrative Code when necessary and in the public interest, upon a showing of undue hardship, upon a finding that strict adherence to such requirements would result in unfairness or injustice and that the granting of a waiver is not inconsistent with the purposes and objectives of the applicable sections of Title 54 of the New Jersey Statutes Annotated, or with the core missions of the Division.

(b) The Director of the Division of Taxation shall not relax any administrative or procedural requirements if such requirements are imposed by applicable State or Federal statutes or by applicable decision or decree of a court of competent jurisdiction.

(c) A request for a waiver must be submitted in writing to the Director and shall include the following:

1. A statement of the type and degree of hardship that would occur if a waiver is not granted; and
2. All documentation that supports the applicant's request for a waiver.

(a)

DIVISION OF TAXATION

**Corporation Business Tax
Foreign Corporations Subject to Tax**

Proposed Amendment: N.J.A.C. 18:7-1.8

Authorized By: Michael Bryan, Acting Director, Division of Taxation.

Authority: N.J.S.A. 54:10A-27 and 54:50-1.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2011-038.

Submit written comments by April 8, 2011 to:

Mitchell C. Smith
Administrative Practice Officer
Division of Taxation
50 Barrack Street
P.O. Box 269
Trenton, NJ 08695

The agency proposal follows:

Summary

The Business Tax Reform Act, P.L. 2002, c. 40, enacted July 2, 2002 (BTRA) made numerous amendments and supplements to the Corporation Business Tax Act (Act). Those amendments made clear that the franchise tax is due from foreign corporations "for the privilege of deriving receipts from sources within this State, or for the privilege of engaging in contacts within this State." This change applied to privilege periods and taxable years beginning on or after January 1, 2002.

The Division is proposing amendments to N.J.A.C. 18:7-1.8(a) to make explicit the responsibilities to file and pay tax for certain taxpayers receiving income from New Jersey sources after the law changed effective January 1, 2002. N.J.A.C. 18:7-1.8(a) is further amended to conform to N.J.S.A. 54:10A-2, by requiring that the taxpayer's business activity in New Jersey is sufficient to allow the State to impose a tax under the U.S. Constitution and statutes. New subsection (b) is added to make clear that certain taxpayers performing services and domiciled

outside the State that solicit business with the State or receive gross receipts from sources within the State must file a corporation business tax return and pay the applicable tax to New Jersey.

As noted above the law change embodied in the proposed amendments is applicable for privilege periods beginning on and after January 1, 2002.

Because the Division has provided a 60-day comment period on this notice of proposal, this notice is excepted from the rulemaking calendar requirements pursuant to N.J.A.C. 1:30-3.3(a)5.

Social Impact

The social impact of these amendments is to draw clear attention to a specific application of the law changes that came about in 2002. The Business Tax Reform Act, P.L. 2002, c. 40, enacted July 2, 2002 made numerous amendments and supplements to the Corporation Business Tax Act. Important changes, contained in Section 1, amended N.J.S.A. 54:10A-2. Those amendments made clear that the franchise tax is due from foreign corporations "for the privilege of deriving receipts from sources within this State, or for the privilege of engaging in contacts within this State." The amendments mandated that a taxpayer's exercise of its franchise in this State is subject to taxation in this State if the taxpayer's business activity in New Jersey is sufficient to give this State jurisdiction to impose the tax under the constitution and statutes of the United States. This change applied to privilege periods and taxable years beginning on or after January 1, 2002.

Accordingly, after the law changed effective January 2, 2002, corporations that derive receipts from sources within New Jersey or engage in contacts within New Jersey are subject to tax in New Jersey, provided that the taxpayer's business activity in New Jersey is sufficient to give this State jurisdiction to impose the tax under the constitution and statutes of the United States.

In establishing new subjectivity standards under the Corporation Business Tax Act, N.J.S.A. 54:10A-1 et seq., the Business Tax Reform Act repealed the former Corporation Income Tax Act, N.J.S.A. 54:10E-1 et seq. and incorporated expansive language regarding subjectivity from the Corporation Income Tax Act into the Corporation Business Tax Act. The New Jersey Supreme Court upheld the application of the Corporation Income Tax Act in *Avco Financial Services Consumer Discount Company One, Inc. v. Director, Division of Taxation*, 100 N.J. 27 (1985). (See also *First Family Mortgage Corporation of Florida v. Linda A. Durham and Mr. Linda Durham, and Attorney General of New Jersey, Intervenor-Respondent*, 108 N.J. 277 (1987), citing *Avco* in determining that N.J.S.A. 14A:13-15, requiring foreign corporations which were not certified to do business in State and which had not filed timely tax returns to file business activities report with the Director of the Division of Taxation, did not violate commerce clause).

Several important judicial opinions were issued subsequent to the enactment of the BTRA in 2002. The Division takes note, for example, of the opinion and outcome in *Tax Commissioner of the State of W. Va. v. MBNA America Bank, N.A.*, 640 S.E2d 226 (W.Va. 2006), cert. denied sub nom *FIA Card Services, N.A. v. Tax Commissioner of West Virginia*, 127 S.Ct. 2997 (2007). The opinion of the highest court of West Virginia upheld against a U.S. Constitutional challenge the tax subjectivity and imposition based on solicitation and receipts derived from sources within the taxing jurisdiction but received by an out of state taxpayer. The New Jersey Supreme Court also upheld the imposition of corporation business tax against a similar challenge by a foreign trademark holding company. *Lanco, Inc. v. Director*, 21 N.J. Tax 200 (2003), 379 N.J. Super 562 (App. Div. 2005), 188 N.J. 380 (2006), cert. denied, 127 S.Ct. 2974 (2007).

Applying the principles of the statute as amended and the above-referenced court decisions, taxpayers performing services and domiciled outside the State that solicit business within the State or derive receipts from sources within the State must file a Corporation Business Tax return and pay the applicable tax to New Jersey. This principle applies to all corporations, including financial corporations. A financial business corporation, a banking corporation, a credit card company or similar business that has its commercial domicile in another state is subject to tax in this State if, during any year, it obtains or solicits business or receives gross receipts from sources within this State. As noted above, the