

5. Emergency action plan;
6. Leak detection and monitoring plan (for pipelines only);
7. Cathodic protection monitoring plan; and
8. Professional certification.

Director's Office
 50 Barrack Street
 PO Box 240
 Trenton, NJ 08695-0240
 E-mail: Tax.RuleMakingComments@treas.state.nj.us

16:25-13.3 Pole installation

(a) On a case-by-case basis, when public safety is not compromised, the Department may approve use of a non-wooden pole when installing a new pole or replacing an existing pole.

(b) Factors that shall be considered in the evaluation of the installation of a non-wooden pole include, but are not limited to, the following:

1. Utility pole location(s) - roadway border area; traveled-way offset; right-of-way availability; existing/proposed sidewalk area;
2. Roadway classification;
3. Roadway alignment;
4. Accident history;
5. Clear Zone - guide rail warrant analysis; guide rail/barrier protection;
6. Utility pole(s) joint usage considerations;
7. Utility maintenance – site access; frequency; workspace, relocation requirements and responsibilities;
8. Public safety;
9. Existing utilities; and
10. Maintenance and protection of traffic – for construction, maintenance, emergency repair.

SUBCHAPTER 14. SEVERABILITY AND INDEMNIFICATION

16:25-14.1 Severability

If any provision of this chapter is held invalid, the remainder of the chapter shall not be affected and shall remain in full force and effect.

16:25-14.2 Indemnification

(a) The public utilities and cable companies shall defend, indemnify, protect, and hold harmless the State of New Jersey and the Department against any and all suits, claims, losses, demands, or damages imposed by law as the result of the installation operation or maintenance of the public utility facilities, including, but not limited to, any damage, disruption, or interference of other public utility facilities within the highway's right-of-way.

(b) The public utilities and cable companies shall defend, indemnify, protect, and hold harmless the State of New Jersey and the Department from any claims or costs associated with damage to their utility facilities or disruption of utility service resulting from Department employees' operations within the highway's right-of-way, except from gross negligence or intentional misconduct.

The agency proposal follows:

Summary

In accordance with the sunset provisions of Executive Order No. 66 (1978) and N.J.S.A. 52:14B-5.1, the Division of Taxation (Division) has evaluated the rules at N.J.A.C. 18:2, General Policies and Procedures, scheduled to expire July 2, 2015, and has determined that the rules are necessary, reasonable and proper for the purpose for which the rules were originally promulgated. As the Division has filed this notice of reoption on or before July 2, 2015, the expiration date is extended 180 days to December 29, 2015, pursuant to N.J.S.A. 52:14B-5.1.c(2). The Division proposes to readopt these rules with substantive changes that are necessary to clarify the use of electronic filing and the accrual date of interest and penalties. Also, the Division clarifies its practice of abating penalties and interest calculated on such penalty without first receiving full payment of outstanding taxes, so long as the taxpayer can demonstrate a reasonable basis for failing to pay in full. The Division also proposes technical amendments to correct grammar, typographical errors, to include plain language, and to make the rules easier to understand.

N.J.A.C. 18:2 is summarized as follows:

Subchapter 1, Forms, sets out the requirement of the use of forms for filing of either those furnished by the Director or, if other forms are used, the conditions that must be met in the reproduction of such forms. N.J.A.C. 18:2-1.1 is proposed for amendment to reference electronic filing requirements, to clarify the use of form reproductions, to remove reference to obsolete technologies, and to include plain language.

Subchapter 2, Penalties and Interest, sets out the penalties and interest to be assessed on taxpayers failing to file returns and pay taxes on time. The provisions include extensions, definition of cost collection, additional assessments, abatement of penalty and interest calculated on such penalty, criminal penalties, and credit for erroneous payments and collections. N.J.A.C. 18:2-2.3 is proposed for amendment to remove provisions no longer in effect (subsections (a) and (b)) and to update and add examples. N.J.A.C. 18:2-2.4 is proposed for amendment to remove outdated provisions, to update and add examples, and to clarify that interest accrues on penalties from the date the underlying tax is due, and not the date when the tax is assessed by the Division, except for penalties that are effective on a date other than when the tax is due. N.J.A.C. 18:2-2.6 is proposed for amendment to remove outdated provisions, to remove examples that are no longer applicable, and to clarify that an assessment made as a result of a taxpayer's failure to comply with an audit is not considered an additional assessment, but rather is considered an estimated assessment under N.J.S.A. 54:49-5. N.J.A.C. 18:2-2.7(a) is proposed for amendment to remove outdated provisions, to clarify the basis for abatement of penalty and interest calculated on such penalty for failure to file a return or pay any tax when due is for tax periods subsequent to the challenged return or payment, and to add examples. N.J.A.C. 18:2-2.8 is proposed for repeal and replacement to reference the tax crime provisions under N.J.S.A. 54:52-5 to 20, rather than to list all of the various crimes and acts that constituted differing levels of crimes. N.J.A.C. 18:2-2.11 is proposed for amendment to remove the date when the current interest calculation statute became effective.

Subchapter 3, Requirements for Payment of Taxes by Electronic Funds Transfer, provides the procedures for payment of taxes electronically. N.J.A.C. 18:2-3.4 is proposed for amendment to remove the transitional periods for the electronic funds transfer (EFT) requirements. N.J.A.C. 18:2-3.6 is proposed for repeal and replacement to remove the transitional periods for determining those taxpayers required to use EFT, and to reflect the current practice that notice is provided as needed to inform the taxpayer of its EFT requirement. N.J.A.C. 18:2-3.7 is proposed for amendment to delete subsection (c), which is no longer applicable, as the phase-in of the EFT is complete. N.J.A.C. 18:2-3.10 is proposed for amendment to reflect that in order to make a voluntary payment of EFT, a taxpayer must enroll with the Division of Revenue and Enterprise Services.

TREASURY — TAXATION

(a)

DIVISION OF TAXATION

General Policies and Procedures

Proposed Reoption with Amendments: N.J.A.C. 18:2

Proposed Repeals and New Rules: N.J.A.C. 18:2-2.8 and 3.6

Authorized By: Dennis Shilling, Acting Director, Division of Taxation.

Authority: N.J.S.A. 54:49-12.5 and 54:50-1.

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

Proposal Number: PRN 2015-089.

Submit written comments by October 2, 2015, to:

Elizabeth J. Lipari
 Administrative Practice Officer
 Division of Taxation

Subchapter 4, Postmark Rule, provides rules for the interpretation and administration of N.J.S.A. 54:49-3.1, which specifies that a timely postmark shall be deemed a timely filing or remittance, and that the use of registered or certified mail shall be deemed prima facie evidence of delivery. N.J.A.C. 18:2-4.3 is proposed for amendment to reflect the use of private delivery services, such as UPS and FedEx, to determine the date of filing or payment, and to include electronic submissions and payments. N.J.A.C. 18:2-4.13 is proposed for amendment to provide the delivery address to private delivery services.

Subchapter 5, Refunds, provides rules for the administration of refund procedures pursuant to the applicable provisions of the State Uniform Tax Procedure Law, N.J.S.A. 54:48-1 et seq., as well as certain provisions of the Sales and Use Tax Act, N.J.S.A. 54:32B-1 et seq., and the New Jersey Gross Income Tax Act, N.J.S.A. 54A:1-1 et seq. N.J.A.C. 18:2-5.2 is proposed for amendment to add the statute of limitations period for sales and use tax, properly named Form A-1730, include the Claim for Refund for Urban Enterprise Zone businesses, remove prior statute of limitation periods no longer in effect, and correct a typographical error. N.J.A.C. 18:2-5.5 is proposed for amendment to clarify the definition of assessments under N.J.S.A. 54:49-5 to include the filing of a return or report that is insufficient to evaluate the accuracy of the taxes owed, to remove reference to the date that N.J.S.A. 54:49-14 was amended, and to remove and update examples. N.J.A.C. 18:2-5.8 is proposed for amendment to make reference to electronic filing of returns, to clarify that an amended corporate business tax return must be marked as such, and to clarify the proofs allowed for sales tax refund for electronic payments. N.J.A.C. 18:2-5.10 is proposed for amendment to include cross-reference to distinguish a class action from a sales tax multiple customer/transaction refund request.

Subchapter 6, Confidentiality and Disclosure, states the rule that Division records are confidential pursuant to N.J.S.A. 54:50-8, and provides a procedure for requesting confidential information pursuant to the exceptions set forth in N.J.S.A. 54:50-9. N.J.A.C. 18:2-6.1 is proposed for amendment to identify the proper branch to submit requests for records.

Subchapter 7, Recordkeeping and Retention Requirements, defines the requirements imposed on taxpayers for the maintenance and retention of books, records, and other sources of information where all or part of the taxpayer's records are received, created, maintained, or generated through various computer, electronic and imaging processes, and systems. N.J.A.C. 18:2-7.2 is proposed for amendment to clarify the definition of "machine-sensible record."

Subchapter 8, Set-off of State Vendor Tax Debt, explains the circumstances under which the Division may set-off all or part of a vendor's contract payment to satisfy State tax indebtedness.

Subchapter 9, Sale of Tax Indebtedness, authorizes the State Treasurer to sell interests in State tax liens that are represented by certificates of debt. N.J.A.C. 18:2-9.2 is proposed for amendment to correct statutory references.

Subchapter 10, Tax Clearance for Business Assistance and Incentives, explains the application and issuance of Tax Clearance Certificates. N.J.A.C. 18:2-10.5 is amended to specify that the Director may issue an Interim Tax Clearance Certificate prior to full payment of all tax delinquencies and deficiencies, if such issuance is in the best economic interest of the State.

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

Social Impact

The rules proposed for re adoption with amendments, new rules, and repeals governing general policies and procedures should facilitate compliance with Division policies and assist taxpayers in navigating tax procedures. The State Uniform Tax Procedure Law applies to any tax payable to or collectible by the Division of Taxation unless otherwise provided in the law specifically imposing such tax.

Economic Impact

The rules proposed for re adoption with amendments, new rules, and repeals help the State to avoid tax litigation costs by providing taxpayers and tax practitioners with guidance on the procedures that must be

followed in their contacts with the Division. The rules protect State revenues by providing further authority for the Division's tax assessment process, penalty, and refund procedures, and the imposition of certain fees.

Federal Standards Statement

A Federal standards analysis is not required because the Division's rulemaking authority is granted by the operative provisions of the State Uniform Procedure Law, N.J.S.A. 54:49-12.5 and 54:50-1, and is not subject to any Federal requirements or standards.

Jobs Impact

The rules proposed for re adoption with amendments, new rules, and repeals should have no impact on the creation or loss of jobs in the State.

Agriculture Industry Impact

The rules proposed for re adoption with amendments, new rules, and repeals will have no impact on the agriculture industry in this State because the rules involve State tax administration.

Regulatory Flexibility Analysis

The rules in N.J.A.C. 18:2 impact the individual taxpayer, as well as large and small businesses as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. As required by law, the provisions of rules regarding reporting and recordkeeping, as well as compliance, must be uniformly imposed without regard to business size. These rules are designed to reduce the need for professional services. However, in the instances of a complex case, the taxpayer may wish to employ professional services on a discretionary basis.

The Division reviews its rules proposed for re adoption with amendments, new rules, and repeals with a view to minimizing the impact of its rules on small businesses to the extent permissible by law. The Division is required to administer the State's tax laws uniformly, equitably, and efficiently to maximize State revenues to support public services, and to ensure voluntary compliance with tax statutes without creating an impediment to economic growth.

The Division has reviewed the application of the Regulatory Flexibility Act to the rules proposed for re adoption with amendments, new rules, and repeals and because the tax rules must be applied uniformly and equitably, the Division cannot develop and apply special rules for small businesses different from the rules applied to all taxpayers.

Housing Affordability Impact Analysis

The rules proposed for re adoption with amendments, new rules, and repeals would not result in a change in the average costs associated with housing, nor would the rules proposed for re adoption with amendments, new rules, and repeals have no impact on any aspect of housing as the rules pertain to the general policies and procedures of the Division.

Smart Growth Development Impact Analysis

The rules proposed for re adoption with amendments, new rules, and repeals would not result in a change in the housing production within Planning Areas 1 or 2, within designated centers, under the State Development and Redevelopment Plan. The basis for this finding is that the rules proposed for re adoption with amendments, new rules, and repeals do not involve housing production. The rules proposed for re adoption with amendments, new rules, and repeals pertain to the general policies and procedures of the Division.

Full text of the rules proposed for re adoption may be found in the New Jersey Administrative Code at N.J.A.C. 18:2.

Full text of the rules proposed for repeal may be found in the New Jersey Administrative Code at N.J.A.C. 18:2-2.8 and 3.6.

Full text of the proposed new rules and amendments follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

SUBCHAPTER 1. FORMS

18:2-1.1 Reproduction of forms

(a) Subject to conditions and requirements in (b) and (c) below **and electronic filing requirements**, the Director will accept, for filing purposes, reproductions of printed return forms, [and] privately designed

and printed, and/or computer-generated and computer-prepared forms, in lieu of the official forms printed and furnished by the Director.

(b) [In order to be acceptable for filing purposes,] **By letter to the Director, Division of Taxation**, privately designed and printed and/or computer-generated and computer-prepared forms [shall] **must** be submitted [to the Division of Taxation] for approval prior to use. [The proposed form shall be forwarded for consideration by letter to the Director, Division of Taxation. The Director may, within his or her discretion, approve a form that] **Approval of such a form is at the Director's sole discretion, so long as the form** does not interfere with either **the Division of Revenue and Enterprise Services'** or Division of Taxation's procedures in any way. If a reproduction [does] **is** not [meet with the Director's approval] **approved**, an explanation of the areas in which the form [was found to be] **is** deficient will be enclosed with the letter rejecting the reproduction. Approval of a reproduction of a tax form [shall be] **is** valid for one tax year[, unless neither]. **If** the official tax form [nor the reproduction] has **not** changed since the year of approval, [in any respect] other than date changes and minor editorial changes, in which case, approval [shall be] **is** valid until the **official** tax form [or reproduction is] changed in any other way. The submission of an unapproved reproduction [shall] **does** not satisfy statutory return filing requirements.

(c) [In order to be acceptable for filing purposes, reproductions] **Reproductions of printed official return forms** must meet the following conditions and requirements **to be acceptable for filing purposes**:

1. Reproductions must be facsimiles of the complete official forms, for the proper tax period, produced by [photo-offset, photoengraving,] photocopying, computer, or other similar reproduction process[es].

2. (No change.)

3. Reproductions must be [of] the same size as [that of] the official form, both as to the overall dimensions of the paper and the image reproduced [thereon].

4. Format of pages [shall] **must** adhere to the following:

i. [It is preferable that both] **Both** sides of the paper **should** be used in making reproductions. However, reproduction on one side will be acceptable;

ii. (No change.)

iii. Separate pages must be fastened together in numerical order; **and**

iv. (No change.)

5.-7. (No change.)

8. The Director does not approve or disapprove the specific equipment or process used in reproducing official forms, but requires only that the reproduced forms satisfy the stated conditions. [It should be noted, however, that photostats do not meet all of the above conditions.]

9. (No changes.)

SUBCHAPTER 2. PENALTIES AND INTEREST

18:2-2.1 Application

The provisions on penalty and interest in this subchapter are applicable to [penalty and interest impositions made on and after October 1, 1975, pursuant to P.L. 1975, c.177, approved August 4, 1975, and on] all taxes subject to the State [Tax] Uniform **Tax** Procedure Law, [as amended by P.L. 1987, c.76 and P.L. 1992, c.175, approved December 10, 1992] **N.J.S.A. 54:48-1 et seq.**

18:2-2.2 Tax laws affected

The provisions of the State [Tax] Uniform **Tax** Procedure Law and this subchapter [shall] apply to any tax [which] **that** is payable to, or collectible by, the Director of the Division of Taxation, unless the law imposing such tax specifically provides that the State [Tax] Uniform **Tax** Procedure Law and this subchapter [shall] **do** not apply, or unless the specific provisions of the law imposing such tax provide for penalty and interest, which is different from the provisions of the State [Tax] Uniform **Tax** Procedure Law and this subchapter.

18:2-2.3 Failure to file return on time

(a) On or before December 8, 1987, any taxpayer failing to file a return within the time prescribed by the act imposing a particular tax shall be liable for the following:

1. A late filing penalty of \$2.00 for each day that the return is delinquent; plus

2. A penalty of five percent per month or fraction thereof of the total tax liability not to exceed 25 percent of such tax liability.

(b) On and after December 9, 1987, any taxpayer failing to file a return within the time prescribed by the act imposing a particular tax shall be liable for the following:

1. A late filing penalty of \$100.00 per month or any part of a month that the return is delinquent; plus

2. A penalty of five percent per month or any part of a month of the total tax liability not to exceed 25 percent of such tax liability.]

[(c)] (a) [On and after September 14, 1998, any] **Any** taxpayer failing to file a return within the time prescribed by the act imposing a particular tax [shall be] **is** liable for the following:

1.-2. (No change.)

3. If a return has not been filed within 30 days of the date on which the first notice of delinquency in filing the return was sent to the taxpayer, the penalty [shall] accrues at five percent per month or any part of a month of the total tax liability not to exceed 25 percent of such tax liability.

[(d)] (b) The penalties set forth in (a)[, (b), and (c)] above [shall be] **are** imposed on the first day following the original due date of the return and the same calendar day of each succeeding month thereafter. [The following are examples of penalty computations.]

Examples:

[1. A corporate taxpayer filed its 1987 corporation business tax return with a due date of April 15, 1988 on June 1, 1988. The return is 47 days late. The taxpayer had a total tax liability for 1987 of \$10,000. In addition to the unpaid tax the taxpayer owes the following amounts.

Delinquency penalty: \$100.00 per month for two months	\$200.00
Late filing penalty: five percent per month of the tax liability	
Five percent x two months = 10 percent of \$10,000	\$1,000.00
Tax liability	<u>\$10,000.00</u>
Total	<u>\$11,200.00</u>

[2.] 1. A corporate taxpayer filed its [1999] **2013** corporate business tax return with a return due date of April 15, [2000] **2014**, on May 1, [2000] **2014**. The taxpayer [had] **reported** a total tax liability of \$100,000. [The] **However, the** taxpayer [sent] **made a tax** payment of \$80,000 [with its payment] **when filing its return**. The taxpayer owes the following amounts:

Delinquency penalty: \$100.00 per month for one month	\$100.00
Late filing penalty: five percent per month of the underpayment not to exceed 25 percent	
Five percent x \$20,000 (\$100,000 - \$80,000) x one month	\$1,000.00
Tax Liability	<u>\$20,000.00</u>
Total	<u>\$21,100.00*</u>

[3.] 2. A corporate taxpayer filed its [1999] **2013** corporate business tax return with a return due date of April 15, [2000] **2014**, on September 16, [2000] **2014**. The taxpayer [had] **reported** a total tax liability of \$100,000. The taxpayer made a payment of \$80,000 on April 15, [2000] **2014**. A Notice of Delinquency was sent to the taxpayer on May 16, [2000] **2014**.

In addition to the unpaid tax, the taxpayer owes the following amounts:

Delinquency penalty: \$100.00 per month for five months	\$500.00
Late filing penalty: five percent per month of the total tax liability not to exceed 25 percent	
Five percent x \$100,000.00 x five months	\$25,000.00
Tax Liability	<u>\$20,000.00</u>
Total	<u>\$45,500.00*</u>

*** The above examples assume that no request for an extension of time to file the applicable returns was made.** In addition, the taxpayer will be liable for interest (see N.J.A.C. 18:2-2.4) and may be liable for other penalties (see, for example, N.J.A.C. 18:2-2.4 and N.J.S.A. 54:49-9 and 9.1).

[(e)] (c) A taxpayer that fails to provide or complete all of the reports, schedules, or other documentation required to be submitted in a return or

report, or omits information from a return or accompanying report, [shall be] is subject to late filing penalties. Such omissions will be treated as a failure to file a return and/or a failure to file a return on time, and the taxpayer shall be liable for penalties and interest as set forth in (a)[,] and (b)[, (c) and (d)] above. The only exception to this rule [will be if authority to omit or to substitute information] **is where a statute or rule authorizes an omission or substitution, and** is expressly stated on the return [form, in a statute or enabling regulation]. The imposition of late filing penalties as provided under this subsection [shall be] is governed by the State Uniform Tax Procedure Law, except as otherwise provided in pertinent State tax statutes or other chapters [of this Code] **in Title 18 of the New Jersey Administrative Code.**

Example: [CBT-100-R-P, Schedule A-4, lines 13 and 14 require historical information to be supplied. Failure to provide such information and related information on Schedule AM will be deemed] **The failure of an individual taxpayer to include a copy of Federal Schedule C or Form NJ-BUS-1 when reporting net profits from business on the taxpayer's NJ-1040 return is a failure to file a return and/or failure to file a timely return, and applicable penalties will be imposed.**

18:2-2.4 Failure to pay on time; extensions of time to pay

(a) Any taxpayer [failing] **who fails to pay a tax within the time prescribed by the act imposing a particular tax [shall pay] is liable,** in addition to the unpaid tax, **for** the following:

1. [Interest on said tax at the rate of one percent for each month or fraction thereof that the same remains unpaid, to be calculated from the date the tax was originally due until October 1, 1975, and at the rate of one and one-half percent per month or fraction thereof from October 1, 1975 to the date of actual payment or until December 8, 1987, whichever is earlier. On and after December 9, 1987, interest on the unpaid tax shall be charged at an annual rate of five percentage points above the prime rate, compounded daily upon the amount that remains unpaid, calculated from the date the tax was originally due until the date of payment. Interest on penalties which are assessed on and after December 9, 1987 shall be charged at the same rate from the date the penalty is assessed until the date of payment. On and after July 1, 1993, interest] **Interest on** the unpaid tax [shall be] is charged at the rate of three percentage points above the prime rate assessed for each month or fraction thereof[. On and after July 1, 1993], **and** interest [will be] is compounded annually at the end of each calendar year.

2. [Unless] **Five percent of the tax shall be added to the amount of the unpaid tax as a penalty, unless** any part of any underpayment of tax required to be shown on a return or report is shown to be unpaid due to reasonable cause[, a sum equivalent to five percent of the tax shall be added to the amount of the tax as a penalty]. The taxpayer has the affirmative obligation to show reasonable cause for the underpayment in order to avoid imposition of the penalty. See N.J.A.C. 18:2-2.7 for basis for a finding of reasonable cause.

3. Interest accrues on penalties from the date that the underlying tax is due, except for those penalties imposed on a date other than when the tax is due, such as amnesty penalties.

[(b) The following examples apply only to tax liabilities paid prior to December 9, 1987:

1. Taxpayer failed to pay a tax that was due on April 15, 1975. On January 15, 1976, the Division of Taxation imposed interest and penalty charges for such failure. Interest will be calculated from April 15, 1975, to October 1, 1975, at the rates in effect immediately prior to October 1, 1975, and at the rate of 1 1/2 percent for each month or fraction thereof that the tax remained unpaid from October 1, 1975, to the date of payment, plus a penalty of five percent of the balance of tax due.

2. In example 1, if taxpayer also failed to file his return (due April 15, 1975) until January 15, 1976, he would be subject to additional penalties set forth in Section 3 of this Subchapter.

3. On May 1, 1975, the division assessed the taxpayer for additional taxes due and at the same time imposed additional interest charges at the rate of one percent per month. On February 15, 1976, taxpayer offers to pay his unpaid taxes. Additional interest shall be calculated from April 15, 1975, to October 1, 1975, at the rate of one percent per month or fraction thereof, and from October 1, 1975, to February 15, 1976, (the date of payment) at the rate of 1 1/2 percent per month or fraction thereof.

In addition, a five percent penalty may be imposed on the balance of tax due.

(c) The following example applies only to tax liabilities paid on or after December 9, 1987:]

Examples:

1. Corporation X's [Corporation Business Tax] **corporation business tax** return was due and filed on April 15, [1988] **2014**. A deficiency of \$50,000.00 is assessed by the Division[. Payment is], **payment due [on] by July 31, [1988] 2014.**

The taxpayer must submit the following amounts on or before July 31, [1988] **2014.**

Late payment penalty: five percent of the balance of tax due	\$2,500.00
Deficiency assessed:	<u>\$50,000.00</u>
	<u>\$52,500.00</u>

Interest on tax, calculated at an annual rate of the prime rate plus [five] **three** percentage points [compounded daily] from the original due date (April 15, [1988] **2014**) until the date of payment (assume July 31, [1988] **2014**), plus interest on penalty, calculated at the same rate from the date the [penalty is assessed] **tax is due** until the date of payment. The applicable prime rate shall be [the rates effective on January 1, 1988 and April 1, 1988, which are assumed to be nine percent and nine and one-half] **6.25** percent[, respectively, for the purposes of this example].

(\$52,500 x 6.25% x 107/365 = \$962)*	<u>\$[2,222.30]962.00</u>
Total	<u>\$[54,722.30]53,462.00</u>

2. Corporation X's Corporation Business Tax return was due and filed on April 15, 2001. A deficiency of \$50,000.00 is assessed by the Division. Payment is made on July 31, 2002.

The taxpayer must submit the following amounts on July 31, 2002.

Late payment penalty: five percent of the balance of tax due	\$2,500.00
Deficiency assessed:	\$50,000.00
Interest to December 31, 2001	<u>\$3,219.76</u>
Unpaid Tax	<u>\$55,719.76</u>
Interest on unpaid tax, calculated at an annual rate of the prime rate plus three percentage points from January 1, 2002 until payment made on July 31, 2002	\$2,335.27
Amnesty Penalty (imposed date amnesty period ended, June 10, 2002) five percent of \$55,719.76	\$2,786.00
Interest on Amnesty Penalty	<u>\$28.22</u>
Calculated from June 10, 2002 (date amnesty period ended) to payment date. (\$2,786 x 7.25% x 51/365 = \$28.22)*	
Total	<u>\$60,869.25</u>

***Rounded to the nearest dollar**

[(d)] (b) Where [the Director is authorized by law and grants an extension of time in which a tax shall be paid, the taxpayer shall be liable for the payment of interest on the unpaid tax at the rate of three percentage points above the prime rate, to be compounded daily from the date such tax was originally due to the date of actual payment. If any or all of such tax is not paid within the time fixed under the extension, the interest on the amount of such unpaid tax shall be computed at the annual rate of five percentage points above the prime rate, to be compounded daily from the date the tax was originally due to the date of actual payment. On and after July 1, 1993, where] the Director grants an extension **of time in which a tax otherwise due may be paid,** interest on the unpaid tax [shall be paid] **is assessed** at the rate of three percentage points above the prime rate assessed for each month or fraction thereof, compounded annually at the end of each calendar year. If any tax is not paid within the time fixed under the extension, the interest on the amount of such unpaid tax [shall be] is computed at the rate of three percentage points above the prime rate assessed for each month or fraction thereof, compounded annually at the end of each calendar year.

[(e)] (c) [On and after December 9, 1987, which is the first day immediately following the 90 day tax amnesty period authorized by P.L. 1987, c.76, for] **For** purposes of calculating interest, "unpaid tax" [shall] means the [total] **sum** of the following:

1.-3 (No change.)

[(f) The following example applies only to tax liabilities paid on or after July 1, 1993:]

Example:

[1.] Taxpayer failed to pay tax that was due April 15, [1994] **2012**. On January 15, [1995] **2013**, the Division issues a Notice and Demand for payment of tax, which [imposes] **includes the applicable** interest and penalty on the outstanding tax. Interest [will be] is calculated at the rate of three percent above the prime rate for each month or fraction thereof, commencing on the date that the tax was originally due (**April 15, 2012**), and shall continue to accrue until the date upon which payment is received. [In addition,] **If a late payment penalty [may be] is imposed, interest on the penalty is calculated at the same rate as the unpaid tax commencing on the date that the tax was originally due, and shall continue to accrue until full payment is received.** Beginning January 1, [1995] **2013**, tax, penalty, and interest are added together at the beginning of each calendar year to become the basis for further calculations of interest.

18:2-2.5 Cost of collection defined

(a) Cost of collection means the amount of expense incurred by the State with respect to the issuance of a certificate of debt for, and the collection of, any State tax not paid within the time prescribed by law. These expenses include, but are not limited to, the following:

1.-7. (No change.)

(b) The Director may[, in his discretion,] impose the actual cost of collection, or, in lieu of ascertaining and imposing the actual cost of collection, [may] **can** impose a fee as follows:

1.-3. (No change.)

(c) [In] **The Director shall consider the following in** determining whether [the Director shall] **to** impose the actual cost of collection or a fee in lieu thereof[, the following factors shall be among those considered]:

1.-8. (No change.)

(d) In the event that any State tax remains unpaid and the Director refers a taxpayer's account to a private person, company, association, or corporation providing debt collection services prior to the entry of a certificate of debt, the Director may impose a referral cost recovery fee as follows:

1. (No change.)

2. If the contract for the private debt collection service has been publicly bid pursuant to N.J.S.A. 52:34-6 et seq., and the contract provides that the compensation to be paid by the State to the provider of private debt collection services is a specified percentage of the debt collected or to be collected, the referral cost recovery fee [shall be] **is** equal to the percentage specified in the contract.

(e) In the event that the Director imposes an arbitrary assessment pursuant to N.J.S.A. 54:49-5 or 7, [the Director shall impose on the amount of the arbitrary assessment] a fee for the cost of collection of 10 percent of the tax assessed, or \$200.00, whichever is greater, **will be imposed on that arbitrary assessment.**

(f) Any fees imposed as cost of collection, or in lieu thereof, or as a referral cost recovery fee [shall be] **are** in addition to any interest, [or] penalties, or both, otherwise provided by law, [shall be] **and are** payable to and recoverable by the Director, along with all penalties and interest, as if they were part of the tax imposed.

(g) Interest or penalties [shall] **will** not be assessed against any fees imposed as cost of collection, or in lieu thereof, or as a referral cost recovery fee; however, the cost of collection may reflect the passage of time between the date the costs were incurred and the date [they] **the costs** are paid.

(h) For the purposes of calculating the percentage of the tax to be imposed in lieu of a fixed fee or the actual cost of collection, [the] "tax" [shall mean:] **means the sum of the unpaid tax, penalties, and interest.**

18:2-2.6 Assessment of tax

(a) Upon audit or investigation of a return that has been filed, where [it is determined] **the Director determines** that there is a deficiency with respect to the payment of any tax due, the additional taxes [shall] **will** be assessed together with penalties of five percent of the additional tax and interest at the rate [in effect immediately prior to October 1, 1975, and at the rate of one and one-half percent per month or fraction thereof from October 1, 1975, to the date of payment or until December 8, 1987, whichever is earlier. On and after December 9, 1987, interest shall be

charged at the annual rate of five percentage points above the prime rate, compounded daily from the later of the date the tax was originally due or December 9, 1987, to the date of payment. On and after July 1, 1993, interest shall be charged at the rate] of three percentage points above the prime rate assessed for each month or fraction thereof, compounded annually at the end of each calendar year, from the date the tax was originally due to the date of actual payment. [Beginning January 1, 1993,] **Any prior year's outstanding** tax, penalty, and interest will be added together to become the basis for further calculations of interest. The taxpayer [shall] **will** be given notice of such assessment and a demand **will be** made [upon him] for payment. [The following are examples of interest and penalty liability:]

[1. On June 15, 1974, a taxpayer filed a return. On February 15, 1976, the taxpayer was notified of an additional assessment and a demand was made upon him for payment. The additional tax bears interest at the rate of one percent per month or fraction thereof from the date the tax was originally due to October 1, 1975, and at the rate of 1 1/2 percent per month or fraction thereof from October 1, 1975, to the date of payment. In addition, taxpayer is subject to penalties of five percent of the additional tax. This example applies only to tax liabilities incurred prior to January 1, 1987 and paid prior to December 8, 1987, the final day of the 90 day tax amnesty period authorized by P.L. 1987, c.76.

2. Corporation X was a fiscal year taxpayer whose year ended July 31, 1984. The final return was due and filed on November 15, 1984. Upon audit in July, 1987, it was determined that there was a \$1,000 deficiency with respect to tax due. If Corporation X pays the deficiency on the final day of the 90 day tax amnesty period authorized by P.L. 1987, c.76, which ends December 8, 1987, the following amounts would be due:

Deficiency assessed:	\$1,000.00
Simple interest calculated at nine percent per annum * from November 16, 1984 through December 8, 1987	\$275.75
Total due	\$1275.75

* Through statutory interest to December 8, 1987 was 18 percent, P.L.1987, c. 76 mandates a nine percent rate for debts paid during the 90 day amnesty

3. Corporation X fails to pay the deficiency assessed within the amnesty period. When payment is made on May 6, 1988 the taxpayer remits \$1,746.63 which represents the following amounts:

Deficiency assessed:	\$1,000.00
Late payment penalty: five percent of the balance of tax due	\$50.00
Simple interest calculated at the rate of one and one-half percent per month from November 16, 1984 through December 8, 1987	\$550.00
	<u>\$1,655.00 PLUS</u>

Interest on \$1,655.00, calculated at an annual rate of the prime rate plus five percentage points compounded daily from December 8, 1987 until the date of payment (May 6, 1988). The applicable prime rate shall be the rates effective on July 1, 1987, October 1, 1987 and January 1, 1988. For the purposes of this example the prime rate is assumed to be:

July 1, 1987	8.25 percent	
October 1, 1987	8.75 percent	
January 1, 1988	9.00 percent	<u>\$91.63</u>
Total		<u>\$1,746.63</u>

Example:

[4.] **1.** Taxpayer's gross income tax return was due on April 15, [1994] **2013**, and filed on October 24, [1994] **2013**. A Notice and Demand is sent by the Division to the taxpayer on December 30, [1994] **2013**. Payment is made on February 15, [1995] **2014**. Interest will be calculated from April 15, [1994] **2013**, to February 15, [1995] **2014**, at the rate of three percent above the prime rate for each month or fraction thereof **on the tax and any penalty, such as late filing and late payment penalty, that may be imposed.** Accrued interest computed for the period January 1, [1995] **2014**, through February 15, [1995] **2014**, shall be calculated on the total of the tax, penalty (if any), and accrued interest calculated from April 15, [1994] **2013** through December 31, [1994] **2013**. [In addition, late filing and late payment penalties may be imposed on the balance of the tax due.]

(b) [For tax liabilities accruing on and after July 1, 1993] **Other than tax assessments referenced in (c) below**, no assessment of additional tax shall be made after the expiration of more than four years from the date of the filing of a return; provided, that in the case of a false or fraudulent return with intent to evade tax, or failure to file a return, the tax may be assessed at any time. [Any unexpired fifth year of a five year period of limitation or unexpired extended period delineated by written consent of a taxpayer remaining on July 1, 1993 shall remain in full force and effect.] If a shorter time for the assessment of additional tax is fixed by the law imposing the tax, the shorter time shall govern. If, before the expiration of the period prescribed herein for the assessment of additional tax, a taxpayer consents in writing that such period may be extended, the amount of such additional tax due may be determined at any time within such extended period. The period so extended may be further extended by subsequent consent in writing made before the expiration of the extended period. The consent of a taxpayer to extend the period of assessment shall extend the period in which the taxpayer may file a refund claim with respect to the identical taxes and tax periods for which the limitations periods have been expressly extended by written consent of the taxpayer. For purposes of this subsection, a return filed before the last day prescribed by law or by rules promulgated pursuant to law for the filing thereof, [shall be] is considered [as] filed on such last day. A return or refund claim is deemed filed with the Division of Taxation in the Department of the Treasury, unless a different agency is specified by law, pursuant to the postmark rule of N.J.S.A. 54:49-3.1 and N.J.A.C. 18:2-4.1.

(c) The **time to assess tax liabilities pursuant to the** Gross Income Tax Act [provides for three year and six year periods of assessment.] **are as follows:**

1.-2. (No change.)

3. The period for assessment of gross income tax may be extended if the taxpayer amends or the Internal Revenue Service adjusts Federal taxable income, or if the taxpayer enters into a written agreement with the Division extending the time to make an assessment, or if an erroneous refund is made as a result of fraud or misrepresentation by the taxpayer. The period of assessment may be suspended under N.J.S.A. 54A:9-4(e). [See N.J.S.A. 54A:9-4.]

4.-5. (No change.)

(d) A tax assessment made due to a taxpayer's failure to comply with an audit or investigation by the Director is an estimated assessment under N.J.S.A. 54:49-5.

18:2-2.7 Abatement of penalty and interest **calculated on such penalty**

(a) [If] **The Director may waive the payment of the whole, or any part, of any penalty, except post-amnesty penalties (such as those assessed under N.J.S.A. 54:53-16 to 19), and any interest accruing from such penalty, if the failure to pay any tax when due or the failure to file any return is explained to the satisfaction of the Director[.].** [he or she may abate the payment of the whole or any part of any penalty and may abate the payment of any interest charge in excess of the rate of one-half of one percent per month from the due date to October 1, 1975, and three-quarters of one percent per month from October 1, 1975 to the date of payment or December 8, 1987, whichever is earlier. On and after December 9, 1987, the Director may abate the payment of any interest charge in excess of the rate of three percentage points above the prime rate compounded daily to the date of payment on the entire existing liability including any tax, penalty, and/or accumulated interest charges. Pursuant to N.J.S.A. 54:49-11(a), after July 1, 1993, the Director may remit or waive the payment of the whole or any part of any penalty and may remit or waive the payment of any interest charge in excess of the rate of three percentage points above the prime rate including any such penalty or interest with respect to deficiency assessments made pursuant to N.J.S.A. 54:49-6.]

(b) An abatement will be granted if the taxpayer can show reasonable cause for failure to file any return or pay any tax when due [and makes full payment of the taxes due]. All of the facts alleged as a basis for reasonable cause for failure to timely file a return or for failure to timely pay or pay over any tax due must be affirmatively shown in a written statement, containing a declaration that it is made under penalties of perjury, made by the taxpayer or other person against whom the penalty

or penalties have been assessed or are assessable. Where the taxpayer or other person is unable to provide such statement or does not have a personal knowledge of such facts, a showing of reasonable cause may be made on behalf of the taxpayer or other person by an individual with a personal knowledge of such facts. In determining whether reasonable cause exists, in addition to an evaluation of such facts, the taxpayer's previous compliance record with respect to all of the taxes imposed may be taken into account.

(c) The following [exemplify grounds for] **are examples of** reasonable cause, [where] **when** clearly established by or on behalf of the taxpayer or other person.

1. The death or serious illness of the taxpayer or a partner, officer, director, shareholder, employee, or other representative of the taxpayer or such individual's unavoidable absence from the usual place of business, which precluded timely compliance, may constitute reasonable cause provided that:

i. (No change.)

ii. In the case of the failure to pay or pay over any tax, such amount is paid or paid over **unless a taxpayer can demonstrate reasonable cause as required under (d) below**, within a justifiable period of time after the death, illness, or absence. A justifiable period of time is that period which is substantiated by or on behalf of the taxpayer or such other person liable for penalty, as a reasonable period of time for filing the return and/or for paying any tax based on the facts and circumstances in each case. Substantiation may be required by the submission of third-party verification in the form of, for example, doctor's reports and hospital insurance carrier reports.

Example: It was established that illness incapacitated the owner of a small business [concern] during the period of delinquency. The taxpayer further established that no other person had access to sufficient information which would enable such person to timely file the delinquent return and pay over the tax due. The return was filed and the tax due was paid over within a justifiable period of time after the owner returned to work. This constitutes reasonable cause for failure to file the return and for failure to pay the tax due.

2. The destruction of the taxpayer's or the taxpayer's representative's place of business or business records by a fire or other documented casualty, which precluded timely compliance, may constitute reasonable cause provided that:

i. (No change.)

ii. In the case of the failure to pay or pay over any tax, such amount is paid or paid over **unless taxpayer can demonstrate reasonable cause as required under (d) below**, within a justifiable period of time after the casualty has taken place. A justifiable period of time is that period which is substantiated by or on behalf of the taxpayer or such other person liable for penalty, as a reasonable period of time for filing the return and/or for paying any tax based on the facts and circumstances in each case. Substantiation may be required by the submission of third-party verification in the form of, for example, police accident reports and insurance claims and settlements.

Example 1: (No change in text.)

Example 2: The same facts as Example 1 above, but the full tax was not paid at the time the return was filed as a result of a dispute with taxpayer's insurance company for the valuation of all business assets on the claim. The taxpayer provides documented proof of the dispute and enters into a payment plan with the Division. This constitutes reasonable cause for failure to pay the tax due.

3. The inability, for reasons beyond the taxpayer's control, to timely obtain and assemble essential information required for the preparation of a complete return, despite the exercise of reasonable efforts, may constitute reasonable cause provided a return is timely filed and the tax is timely paid or paid over on that portion of the tax liability which can be ascertained. The relevant facts affecting that portion of the tax liability which cannot be ascertained must be fully disclosed with the timely filed return and when such liability is ascertained, and where applicable collected, an amended return must be immediately filed together with any additional tax due.

Example: [Due to an inability to obtain certain records, a taxpayer was unable for reasons beyond its control to determine its proper tax liability prior to the prescribed date for paying its tax. The taxpayer timely filed a

return and paid the tax due on that portion of the tax liability which was ascertainable. Attached to the return was] **A limited partnership fails to issue K-1 forms in time for a limited partner to include the information on the partner's return. The partner, in good faith, estimates the partner's share of income earned by the partnership. The partner attaches a rider [which explained] that explains in detail why the proper tax liability could not be determined prior to the due date. [When the records in question were obtained and assembled, an amended return was immediately filed] Subsequently, the K-1 form is issued, the partner immediately files an amended return and the additional tax due [was] is paid. This constitutes reasonable cause for failure to pay the tax due.**

4. A pending conference with the Division of Taxation, or a pending action or proceeding for judicial determination, **which involves a question or issue affecting whether or not the individual or entity is required to file a return and/or pay tax**, may constitute reasonable cause, [until the time in which the taxpayer has exhausted its administrative or judicial remedies, as applicable, for a taxable period or periods the return or returns for which are due subsequent to the commencement of the conference proceeding, or the commencement of the judicial action or proceeding] provided that:

[i. The action or proceeding involves a question or issue affecting whether or not the individual or entity is required to file a return and/or pay tax;]

i. The return or returns that are due are for a tax period or periods subsequent to the commencement of the conference or proceeding;

ii.-iii. (No change.)

Example: An individual is awaiting a determination[, after a hearing,] of the Tax Court of New Jersey regarding whether or not such individual was required to file a return and collect and remit tax in a prior taxable period. The petition on the matter to the Tax Court was filed prior to the due date for the return for the current taxable period. The facts and circumstances for the current taxable period are identical to those of the period covered by the petition. The individual's position is arguable and has merit based on case law or other recognized legal authority. This constitutes reasonable cause for failure to file a return and for failure to pay the tax due for the current period.

5. Any other cause for delinquency which would appear to a person of ordinary prudence and intelligence as a reasonable cause for delay and which clearly indicates an absence of willful neglect may be determined to be reasonable cause. Ignorance of the law[, however, will not be considered as] **is not a basis for reasonable cause.**

Example 1: A manufacturer with production facilities throughout New Jersey has established an accrual accounting system to record purchases subject to use tax. The manufacturer, as the result of [his] its first sales and use tax audit, owes additional use tax because of occasional misclassification of office supplies and equipment. After a review of a written statement[,] submitted by the [taxpayer] **manufacturer**, containing all of the facts alleged as a basis for reasonable cause, it was determined that the [taxpayer] **manufacturer** had made reasonable efforts to account for its use tax liabilities, that the understatement of tax was unintentional, and that the manufacturer had otherwise substantially complied with the law. The audit findings established that willful neglect did not occur and reasonable cause existed. Therefore, penalty and interest [in excess of the statutory minimum] **calculated on such penalty will be waived.**

Example 2: A vendor who operates a large restaurant business has an accounting system which is devised in such a way that the tax to be remitted each quarter is based on the accumulated taxable sales. An overcollection test was performed on the guest checks which disclosed occasional miscalculation of tax by vendor's staff which resulted in an understatement of the tax due and paid. The [taxpayer] **vendor** submitted a written statement containing all of the facts alleged as a basis for reasonable cause. The understatement of the tax due was not considered substantial, taking into account the size of the operation, volume of sales, and an otherwise sound accounting system. The audit findings established that willful neglect did not occur and that reasonable cause existed. Therefore, the penalty and interest [in excess of the statutory minimum would] **calculated on such penalty will be waived.**

(d) A failure to pay will be considered to be due to reasonable cause[,] to the extent that the taxpayer has made a satisfactory showing that [he] **the taxpayer** has exercised ordinary business care and prudence in providing for payment of [his] **the** tax liability and was nevertheless either unable to pay the tax or would suffer an undue hardship if [he] paid on the due date. In determining whether the taxpayer was unable to pay the tax in spite of the exercise of ordinary business care and prudence in providing for payment of [his] **the** tax liability, consideration will be given to all the facts and circumstances of the taxpayer's financial situation, including the amount and nature of the taxpayer's expenditures in light of income (or other amounts) [he] **the taxpayer** could, at the time of such expenditures, reasonably expect to receive prior to the date prescribed for the payment of the tax. [Thus, for] **For** example, a taxpayer who incurs lavish or extravagant living expenses in an amount such that the remainder of [his] **the taxpayer's** assets and anticipated income will be insufficient to pay [his] **the** tax, has not exercised ordinary business care and prudence in providing for the payment of [his] **the** tax liability. Further, a taxpayer who invests funds in speculative or illiquid assets has not exercised ordinary business care and prudence in providing for the payment of [his] **the** tax liability unless, at the time of the investment, the remainder of the taxpayer's assets and estimated income will be sufficient to pay [his] **the** tax or it can be reasonably foreseen that the speculative or illiquid investment made by the taxpayer can be utilized (by sale or as security for a loan) to realize sufficient funds to satisfy the tax liability. A taxpayer will be considered to have exercised ordinary business care and prudence if [he] **the taxpayer** made reasonable efforts to conserve sufficient assets in marketable form to satisfy [his] **the** tax liability and nevertheless was unable to pay all or a portion of the tax when it became due.

1. In determining whether reasonable cause and good faith exist, the most important factor to be considered is the extent of the taxpayer's effort to ascertain the proper tax liability. In addition to any relevant grounds for reasonable cause as exemplified in (c) above, circumstances that indicate reasonable cause and good faith with respect to the substantial understatement or omission of tax, where clearly established by or on behalf of the taxpayer, may include the following:

i.-ii (No change.)

iii. Pursuant to N.J.S.A. 54:49-11[b],b, the reasonable reliance by the taxpayer on erroneous written advice furnished by an officer or employee of the Division of Taxation acting in the officer's or employee's official capacity entitling that taxpayer to appropriate penalty and interest waivers permitted by law, provided that the penalty or interest did not result from a failure of the taxpayer to provide adequate or accurate information to the officer or employee, and provided such reliance was reasonable and the taxpayer had no knowledge of circumstances which [should], **upon inquiry, would have [put] made the taxpayer [upon inquiry] aware** as to whether such facts were erroneous. For purposes of this subparagraph, no officer or employee of the Division of Taxation is authorized to provide written advice which is binding on the Division of Taxation in the absence of a written request from a taxpayer; or

iv. (No change.)

Example 1: Taxpayer prepared a gross income tax return relying upon a Form 1099-INT for interest income received from various investments. The provider of the form reissues it as a result of a significant error in calculation. Taxpayer, upon receipt of the reissued form, immediately files an amended tax return, but does not have the means to pay the tax at that time, and enters into a payment plan. The penalty and interest calculated on such penalty will be waived.

Example 2: Taxpayer did not charge sales tax on a certain service after receiving erroneous written advice furnished by an employee of the Division of Taxation that taxpayer reasonably relied upon. Subsequently, after audit, it was determined that such services were taxable. The taxpayer does not have the resources to pay the tax liability in full at the time of audit and enters into a payment plan with the Division. Therefore, the penalty and interest calculated on such penalty will be waived.

Example 3: Due to fiscal constraints, a business delays recording its taxable sales to the following quarter, postponing remittance of the sales tax collected. Such delay by the taxpayer does not constitute

an honest misunderstanding of fact or law. Therefore, the penalty and interest calculated on such penalty will not be waived.

2. (No change.)

(e) (No change.)

18:2-2.8 Criminal penalties

Any violations of the State tax laws may rise to the level of criminal activity and be prosecuted as crimes. See N.J.S.A. 54:52-5 to 20.

18:2-2.10 Credit for erroneous payments and collections

(a) [Where] **The Director may credit the erroneous overpayment of tax to the account of the taxpayer to offset the amount of a deficiency assessment, where** it is determined as a result of the audit of any taxpayer that a State tax has been erroneously or illegally collected from such taxpayer, or has been paid by such taxpayer under a mistake of law or fact, and where no questions of law or fact are involved[, the Director may credit the erroneous overpayment of tax to the account of the taxpayer to offset the amount of a deficiency assessment]. Such offsets will be made with the following limitations:

1.-3. (No change.)

(b) (No change.)

18:2-2.11 Prime rate defined

For the purposes of determining the interest charge to be assessed against a taxpayer, prime rate shall mean the average predominant prime rate, as determined by the Board of Governors of the Federal Reserve System, quoted by commercial banks to large businesses as of the first business day of the calendar quarter immediately preceding the quarter within which the tax or payment became due. The applicable rate shall be adjusted on the first business day of each quarter thereafter over the life of the debt. [As to the calculation of interest accruing on and after July 1, 1993, prime] **Prime** rate means the rate quoted as of December 1 of the calendar year immediately preceding the calendar year in which the payment was due; provided, however, that if the Director determines that the prime rate quoted by commercial banks to large businesses varies by more than one percentage point from the rate otherwise determined, the Director shall redetermine the prime rate to be that quoted prime rate for subsequent calendar quarters of the calendar year in which payments become due.

SUBCHAPTER 3. REQUIREMENTS FOR PAYMENT OF TAXES BY ELECTRONIC FUNDS TRANSFER

18:2-3.1 Purpose

[These rules enable the State to receive the actual] **This subchapter facilitates the timely receipt of tax monies from certain taxpayers**[, by the payment due date,] because the taxpayers are required to pay their taxes by electronic funds transfer, instead of being allowed to pay by check or other similar instrument.

18:2-3.2 Scope

This subchapter [establishes the bases] **sets forth the criteria** for determining which taxpayers must pay taxes by electronic funds transfer (EFT), as well as the basic requirements for paying by EFT.

18:2-3.4 Payments required to be paid by electronic fund transfer

(a) Between March 1, 1993, and February 28, 1994, a taxpayer that had a prior year liability for any type of tax, with certain exceptions in (g) below, in the amount of \$200,000 or more shall remit all its State tax payments of all types, with certain exceptions in (g) below, by using EFT. The taxpayer may choose the ACH debit method or the ACH credit method of EFT.

(b) Between March 1, 1994, and February 28, 1995, a taxpayer that had a prior year liability for any type of tax, with certain exceptions in (g) below, in the amount of \$100,000 or more shall remit all its State tax payments of all types, with certain exceptions in (g) below, by using EFT. The taxpayer may choose the ACH debit method or the ACH credit method of EFT.

(c) Between March 1, 1995, and February 29, 1996, a taxpayer that had a prior year liability for any type of tax, with certain exceptions in (g) below, in the amount of \$50,000 or more shall remit all its State tax

payments of all types, with certain exceptions in (g) below, by using EFT. The taxpayer may choose the ACH debit method or the ACH credit method of EFT.

(d) Between March 1, 1996, and July 1, 2004, a taxpayer that had a prior year liability for any type of tax, with certain exceptions in (g) below, in the amount of \$20,000 or more shall remit all its State tax payments of all types, with certain exceptions in (g) below, by using EFT. The taxpayer may choose the ACH debit method or the ACH credit method of EFT.]

[(e)] (a) [Beginning July 2, 2004, a] **A taxpayer that had a prior year liability for any type of tax, with certain exceptions in [(g)] (c) below, in the amount of \$10,000 or more shall remit all [its] State tax payments of all types, with certain exceptions in [(g)] (c) below, by using EFT. The taxpayer may choose the ACH debit or ACH credit method of EFT or such other EFT method of payment, such as credit card or electronic check, as may be authorized by the Director.**

[(f)] (b) The EFT requirements of (a) [through (e)] above [apply] **applies** to any estimated tax payments due from a taxpayer.

[(g)] (c) The EFT requirements of (a) [through (e)] above [do] **does** not apply to payments of the following types of taxes:

1.-3. (No change.)

[(h)] (d) [Beginning January 1, 1998, any] **Any** taxpayer that sells, stores, delivers, transports, or generates natural gas or electricity shall remit the taxes and assessments listed in this subsection by using EFT, without regard to the lack of or amount of any prior year liability or estimated current year liability[;].

1.-4. (No change.)

18:2-3.6 Determination of prior year liability

If a taxpayer, as a result of the taxpayer's prior year liability, must comply with EFT requirements, the taxpayer will be provided notice as to such requirements.

18:2-3.7 Notice to taxpayers

(a) [The Director will notify taxpayers] **A taxpayer will be notified of [their] the taxpayer's EFT payment requirements at least 30 days prior to the [date on which the Director first requires] required compliance [with N.J.A.C. 18:2-3.4(a) through (f)] date.**

(b) The failure [of the Director to notify a taxpayer as required] **to receive notice** by (a) above shall not relieve a taxpayer from compliance with its EFT payment requirements. However, if the Division's records indicate that [the Director failed to notify] **notice was not provided** to the taxpayer as required by (a) above, the Director may take the lack of notice into consideration with respect to any request for a waiver of penalty or interest **calculated on such penalty.**

[(c)] The Director will annually, on such date as is practicable, notify those taxpayers that do not meet the current "prior year liability" threshold for being required to pay by EFT.]

18:2-3.8 Penalties and interest for late EFT payments

(a) If an EFT payment is deposited later than the date required by N.J.A.C. 18:2-3.5(a), the Director shall, for the period between the required and the actual deposit date, assess late payment penalties and interest as provided under the State [Tax] Uniform **Tax** Procedure Law or under the pertinent State tax law.

(b) If the availability of funds for EFT payment is delayed, and if the taxpayer shows, to the satisfaction of the Director, that the delay was due to reasons beyond the control of the taxpayer, the Director shall abate penalties and interest. Circumstances such as the taxpayer's [being in a] poor financial condition, **by itself**, will not[, by itself,] be deemed to be a reason[s] beyond the control of the taxpayer.

18:2-3.10 Voluntary EFT payment

[(a)] A taxpayer not required to remit payments by EFT may[, upon written approval from the Director,] use the ACH debit or ACH credit method for EFT payment for such types of taxes as the taxpayer elects. **The taxpayer must first enroll with the Division of Revenue and Enterprise Services prior to beginning EFT payments. See <http://www.state.nj.us/treasury/taxation/eftpavoptions.shtml>.**

[(b)] Once the Director has given written approval, a taxpayer must use the approved EFT method of payment unless the taxpayer gives the

Director notice in writing at least 30 days prior to withdrawing from voluntary participation.

(c) Except as otherwise provided in this section, any taxpayer voluntarily remitting taxes by EFT must follow the EFT requirements of this subchapter and any pertinent guidelines prescribed by the Director.]

18:2-3.11 Effect of subchapter

If the provisions of [these rules] **this subchapter** conflicts with the provisions of any other tax rule concerning the payment of State taxes, except those taxes excepted in N.J.A.C. 18:2-3.4[(g)](c), the provisions of N.J.S.A. 54:48-4.1 and [these rules] **this chapter** shall govern, unless the context clearly indicates otherwise.

SUBCHAPTER 4. POSTMARK RULE

18:2-4.3 Postmark or mailing date deemed date of filing or payment

(a) For documents required to be filed with or payments to be made to the [director] **Director** generally, and except as otherwise provided, the date of the United States postmark as stamped on the envelope or other wrapper in which such document or payment is contained will be deemed to be the date of filing or payment.

(b) **Where delivery is made by a private delivery service designated by the IRS to meet 26 CFR 301.7502-1(e)(2) (Timely mailing of documents and payments treated as timely filing and paying) for tax returns and payments, such as UPS and Fedex, the mailing date will be deemed to be the date of filing or payment.**

(c) Where delivery is made by courier, delivery messenger, or similar service, **or a private delivery service not designated by the IRS to meet 26 CFR 301.7502-1(e)(2) (Timely mailing of documents and payments treated as timely filing and paying) for tax returns and payments**, the date of receipt by the Division, as evidenced by an authentic Division of Taxation date stamp, will be deemed to be the date of filing or payment.

(d) **Where delivery is made by electronic submission, the date of receipt by the Division as evidenced by the submittal confirmation will be deemed the date of filing or payment.**

18:2-4.13 [Express delivery] **Delivery requirement for private delivery service**

Where delivery of documents and payments is made by [Federal Express, United Parcel Service, or similar] **a private delivery service**, [such documents shall be deemed filed, or the payments shall be deemed paid, one day prior to the date upon which such documents and payments are received by the Division of Revenue. Such] **such** documents or payments shall be delivered to the Division of Revenue **and Enterprise Services**, [160 South Broad Street (Livingston Street entrance)] **200 Wolverson Street, Building 20**, Trenton, [New Jersey 08646] **NJ 08611**.

SUBCHAPTER 5. REFUNDS

18:2-5.1 Purpose

This subchapter provides rules for the administration of refund procedures pursuant to the applicable provisions of the State [Tax] Uniform Tax Procedure Law, N.J.S.A. 54:48-1 et seq., as well as certain provisions of the Sales and Use Tax Act, N.J.S.A. 54:32B-1 et seq., and the New Jersey Gross Income Tax Act, N.J.S.A. 54A:1-1 et seq.

18:2-5.2 Claims for refund; when allowed

(a) Taxpayers may claim a refund for overpayment of taxes by filing a return, [or a] Claim for Refund (Form A-3730), **or Claim for Refund – Urban Enterprise Zone Businesses (Form A-3730-UEZ)**, except that with respect to a claim for refund of a payment of an additional tax assessment as permitted by N.J.S.A. 54:49-14.b and N.J.A.C. 18:2-5.5(b)1, taxpayers are to use **Claim for Refund of Paid Audit Assessment (Form A-1730)**.

[(b) For claims accruing prior to July 1, 1993, any taxpayer may file a claim for refund within two years from the payment of any original or additional tax assessed against the taxpayer, unless a shorter time limit is imposed by the law imposing a particular tax statute.]

[(c)] (b) [For claims accruing on and after July 1, 1993, any] **Any** taxpayer may file a claim for refund within four years from the payment of any original or additional tax assessed against the taxpayer, unless a

shorter time limit is fixed by the law imposing a particular tax statute. [All claims barred by the applicable statute of limitations on July 1, 1993 shall continue to be barred.]

(c) **The statute of limitations period for filing a claim for refund of New Jersey Sales Tax is four years after the tax is paid, except for refund claims that are based on the UEZ purchase exemption, which is one year after the tax is paid.**

(d)-(e) (No change.)

18:2-5.3 Claim not required or permitted until final determination

(a) No claim for refund [shall be] **is** required or permitted to be filed with respect to a tax paid, after protest has been filed with the Director, or after appeal proceedings have been commenced, until such protest or appeal has been finally determined. Should the protest or appeal with respect to a tax paid be finally determined in favor of the taxpayer, then the refund claim shall be processed by the Director in accordance with the Director's final determination after protest or the judgment of the Tax Court upon appeal.

(b) (No change.)

18:2-5.4 Credit against outstanding tax liabilities

(a) In examining a claim for refund, if [it is determined] **the Director determines** that there has been an overpayment of tax, the amount of the overpayment [and interest on the overpayment, if any,] will be credited against any outstanding State tax liability of the taxpayer. If there is no outstanding State tax liability, the taxpayer will be entitled to a refund of the overpayment and interest on the overpayment, if any.

(b) (No change.)

18:2-5.5 Items previously assessed

(a) The following terms, when used in this section, shall have the following meanings:

1. "Delinquency tax assessment," [or] "arbitrary tax assessment," or "estimated tax assessment" each mean an assessment made pursuant to N.J.S.A. 54:49-5, or any substantially similar provision under a specific State tax statute, whereby the taxpayer has failed to file a return or report as required under any tax law, **or has filed a return or report that is insufficient for the Director to evaluate its accuracy**, and the Director has estimated and assessed the taxes, fees, penalties, and interest due from the taxpayer.

2.-3. (No change.)

(b) Except as provided by (c)1 below[,] and N.J.A.C. 18:2-5.7, no claim for refund [shall be] **is** permitted for items which were previously the subject of an assessment by the Director where the taxpayer was permitted 90 days to protest the assessment pursuant to N.J.S.A. 54:49-18, or similar provisions of any particular tax statute. Failure to timely protest the assessment [shall be deemed] **constitutes** a waiver of the taxpayer's right for review of that item.

(c) The extended refund request period exception is as follows:

1. [For a return period beginning on or after January 1, 1999, a] **A** taxpayer may file a claim for refund of a payment of an additional assessment issued by the Director with respect to [Corporation Business Tax, Corporation Income Tax, Savings Institution Tax, Petroleum Gross Receipts Tax, Tobacco Products Wholesale Tax, Sales and Use Tax or Gross Income Tax, or in the case of a decedent dying on or after January 1, 1999, a taxpayer may file a claim for refund of a payment of an additional assessment issued by the Director with respect to Transfer Inheritance Tax or Estate Tax] **all taxes**, if the taxpayer:

i.-v. (No change.)

2.-4. (No change.)

5. The procedures prescribed by (c)1 above [does] **do** not apply to refunds of payments of costs of collection, delinquency, estimated or arbitrary tax assessments, jeopardy tax assessments when no return has been filed for the period(s) at issue, payments of penalty and interest without payment of an underlying additional tax assessment, and payments of penalty and interest imposed without assessment of an additional tax.

6.-7. (No change.)

8. Examples:

[i. The Division of Taxation issues an additional tax assessment for the taxpayer's year ended December 31, 1995. The taxpayer disagrees with

the assessment but does not contest the assessment with the Division of Taxation or in the New Jersey Tax Court within 90 days of the issuance of the notice of additional tax assessment. The taxpayer pays the assessment and subsequently discovers that the identical issue upon which the assessment was based was decided in favor of another taxpayer and adversely to the Division of Taxation by the New Jersey Tax Court in another case. The taxpayer then files a claim for refund. Since it did not contest the assessment in a timely fashion, and since the assessment was for a return period prior to the effective date of P.L. 1998, c.106, authorizing the procedure for refund set forth at (c) above, the claim must be rejected. The assessment proceeding is not converted to a refund action by filing a refund claim.

ii. The same facts as in (c)8i above except that the additional tax assessment was issued with respect to a return period commencing on or after January 1, 1999 and the taxpayer complies with all the requirements of (c)1 above. The claim for refund will not be denied on the ground that it was not timely filed.]

[iii.] i. The Division of Taxation issues an additional corporation business tax assessment for the taxpayer's [2000] **2013** fiscal year which results from an adjustment to the property fraction of the allocation factor used by the taxpayer in its return for that year. The notice of additional tax assessment does not refer to any other reason for the assessment. The taxpayer follows the refund procedure prescribed in (c)1 above. It contends that it is entitled to a refund of the tax paid on the ground that the payroll fraction of the allocation factor that it used in its [2000] **2013** return was erroneous. Since the ground provided in the notice of assessment does not refer to the payroll fraction of the allocation factor, the Division of Taxation will not consider that ground in reviewing the claim for refund.

[iv.] ii. The Division of Taxation issues an additional corporation business tax assessment which results from an adjustment to the taxpayer's net operating loss and to the payroll fraction of the allocation factor used in the taxpayer's fiscal [2000] **2013** corporation business tax return. The taxpayer protests the adjustment to the net operating loss but not the adjustment to the payroll factor. The taxpayer may not later pay the corporation business tax stemming from the adjustment to the payroll factor and seek a refund of that payment under (c)1 above.

Recodify existing v. and vi. as **iii. and iv.** (No change in text.)

[vii.] v. An individual taxpayer residing in New Jersey fails to file a gross income tax return for the calendar year [1999] **2013**. The taxpayer does not provide any information to the Division of Taxation concerning the taxpayer's [1999] **2013** income and expenses, although requested to do so. Thereafter, the Division of Taxation issues a delinquency gross income tax assessment for that year. As the assessment is not an additional tax assessment, the refund procedure prescribed in (c)1 above is not available to the taxpayer.

[viii.] vi. An individual taxpayer residing in New York files a gross income tax return for the calendar year [1999] **2013**. The Division of Taxation reviews the return. The Division of Taxation requests the taxpayer to provide copies of Federal schedules and a detailed calculation of the income and deductions shown on the return. Thereafter, the Division of Taxation issues an arbitrary gross income tax assessment for that year, estimating the additional tax owed and assessing applicable penalty and interest charges. As the taxpayer did not supply the required report to the Division of Taxation, the refund procedure prescribed in (c)1 above is not available to the taxpayer.

Recodify existing ix.-xi. as **vii.-ix.** (No change in text.)

[xii.] x. Taxpayer timely files a [2000] **2013** resident gross income tax return claiming a credit for taxes paid to other jurisdictions on wages taxed by both New York and New Jersey. Upon audit it is determined that the taxpayer failed to report a taxable distribution from a New Jersey S Corporation which also necessitates that [their] **the** credit be amended. The taxpayer does not appeal the assessment within 90 days of the notice. Taxpayer files a claim for refund under (c)1 above amending [their] **the** credit for taxes paid to other jurisdiction as a result of a New York audit increasing New York source wages. The taxpayer is precluded from claiming a refund under this provision [in] **on** that the ground for the additional tax assessment is not the same ground for the taxpayer's refund request.

18:2-5.7 Extension of time; sales and use tax exception

(a) If a taxpayer and the Division sign an agreement to extend the time during which an assessment can be made, the taxpayer's refund application period is automatically extended until the last date by which the parties agree that any assessment of New Jersey taxes must be made. The refund application period only applies to the particular taxes and periods expressly included in the extension agreement. A taxpayer's opportunity to apply for a refund under such an agreement is extended to and includes the last date by which the parties agree that any assessment of New Jersey taxes must be made. An extension agreement will not [receive] **revive** refund application rights [which] **that** expired prior to the agreement's execution. [Thus, for] **For** example, if the Division makes an assessment by the last date permitted under the agreement, but the taxpayer does not make an otherwise appropriate refund claim prior to the last permissible date for making an assessment under the agreement, the taxpayer has 90 days to protest the assessment only under N.J.S.A. 54:49-[18a]**18.a.** Under N.J.S.A. 54:49-[18a]**18.a.**, a taxpayer has 90 days to protest any refund claim rejected pursuant to N.J.S.A. 54:49-15.

(b) (No change.)

18:2-5.8 Refund claim procedures

(a) **When applicable, certain amended returns may be required to be submitted electronically. Copies of paper forms are available at <http://www.state.nj.us/treasury/taxation/forms.shtml>.** Procedures for filing for a refund after a return has been submitted are as shown in (b) through (e) below.

(b) For [Gross Income Tax] **gross income tax**:

1. Employer refunds: If the taxpayer made an overpayment when remitting employee withholdings with a Return of Gross Income Tax Withheld (Form NJ-500), the taxpayer should make the adjustment on the next NJ-500 filed **electronically** after the error is discovered. A written explanation should be [attached, including] **included with** a legible copy of the erroneous [form] **Form** NJ-500, any calculations, and the amount of tax remitted should be adjusted accordingly on the subsequently filed **Form** NJ-500 [form]. Alternatively, the taxpayer may apply for a refund of an overpayment when filing a Gross Income Tax Reconciliation of Tax Withheld (Form NJ-W-3) at the end of the calendar year along with the documents described above. If the error is discovered after all NJ-500 and the NJ-W-3 [Forms] **forms** are filed, the taxpayer should complete another NJ-W-3, write "Amended" across the top of the form, and submit it with the corrected information and supporting documentation.

2. Individual refunds: The taxpayer may amend a gross income tax return and request a refund by filing an Amended Income Tax Resident Return (Form NJ-1040X) **either electronically or by mail** for the year in question. There is no amended return for nonresident filers. Nonresident filers should complete an Income Tax Nonresident Return ([form] **Form** NJ-1040-NR) for the appropriate tax periods and write "Amended" across the top.

(c) For [Corporation Business Tax] **corporation business tax**, a corporate taxpayer may amend a corporation business tax return and request a refund by filing [an Amended Corporation Business Tax Return (Form CBT-100-X)] **a completed new return of the same type and tax year that the taxpayer used to file the initial return and write "AMENDED RETURN" on the front page of the form.** Any schedules [which] **that** have changed since filing the original return should be attached. For refunds of [Corporation Business Tax] **corporation business tax**, see N.J.A.C. 18:7-13.8, 13.9, and 13.10.

(d) For [Sales Tax] **sales tax** (other than urban enterprise zone refunds):

1. Business refunds: If the person required to collect the tax overpaid sales tax on the Monthly Remittance (Form ST-51), the adjustment should be made on the Sales and Use Tax--Quarterly Return (Form ST-50). If the person required to collect the tax failed to adjust the quarterly return, a Claim for Refund (Form A-3730) and a New Jersey [Sales Tax Amended Return (Form ST-607-A)] **sales tax amended return** should be completed for the appropriate tax period(s).

2. Individual refunds: If the taxpayer overpaid sales tax when making a retail purchase, the taxpayer may request a refund directly from the [vendor] **seller** from whom the purchase was made. However, if the [vendor] **seller** has already submitted the tax to the State, the taxpayer

must complete a Claim for Refund (Form A-3730) and include supporting documents to substantiate the claim.

3. Refund claims of [Sales and Use Tax shall] **sales and use tax must** include documentation of all transactions to substantiate the tangible personal property or service that is the subject of the refund claim and the amount requested. Documentation required is as follows:

i. The [refund claim] **Claim for Refund (Form A-3730[.])** [shall] **must** be filed with documents, such as invoices, receipts, proof of payment of tax, and exemption certificates. These documents must be provided in a format suitable to determine the correctness of the grounds for the refund and the amount of the refund or credit. Acceptable formats include photocopies or in lieu of paper copies, imaged documents. Imaged documents, which can be read with universal readable software, such as Adobe PDF and presented on CD may be submitted if first:

(1)-(2) (No change.)

ii. (No change.)

iii. Proof of payment for sales/use tax remitted.

(1) Proof of sales tax remitted to [vendors] **sellers** is required and the Division will accept copies of canceled checks. **If payment was made electronically, the Division will accept copies of bank statements with an itemization of all the transactions that make up the electronic payment.** A request for use of an alternative proof of payment must be requested in writing to the Sales and Use Tax Refund Section and written approval received by the claimant prior to submission of such alternative proof of tax payment in support of the refund claim. Any approved alternate proof of payment must provide a trail between the documents presented by use of notation, highlighting, or other identification of the particular matching transactions.

(2) Proof of use tax accrual and remittance is required and the Division will accept copies of detailed journal entries or detailed listings previously prepared by the taxpayer in determining the use tax liability as reported on the ST-50 **Sales and Use Tax** Quarterly Return, an ST-18 Use Tax Return, an ST-18B Annual Business Use Tax Return, or on the Gross Income Tax Individual Return NJ-1040. Payment of use tax will be confirmed from Division records;

iv. When the basis of a claim for refund is the receipt of an exemption certificate from the customer after the seller has remitted the tax on their ST-50 return, then copies of the following documents are required:

(1)-(2) (No change.)

(3) [Credit memoranda] **Proof of issuance and use of customer creditor or other** proof of repayment of the tax to the customer; and

v. (No change.)

4. Refund claims of [Sales and Use Tax] **sales and use tax** with 25 or more separate transactions or credit memoranda [shall] **must** be filed with a computer spreadsheet [(A-3730-SU-1)]. A computer spreadsheet is a computer program that arranges numerical and textual data into a table of rows and columns. The computer spreadsheet [shall] **must** display information for each transaction that is included as the subject of the refund claim.

i. The spreadsheet [shall] **must** include, but is not limited to:

(1) The names of [vendor] **seller** and customer;

(2)-(8) (No change.)

ii. The computer spreadsheet should be edit-locked and, for the purposes of this section, the Division will accept computer spreadsheets created with Excel or any other .xls file compatible computer spreadsheet application. The computer spreadsheet shall be submitted with the refund claim on a compact disc or similar medium in common use. Receipt of a computer spreadsheet without simultaneous or prior filing of [the form] **Form A-3730** does not constitute the filing of a claim for purposes of statute of limitations.

(e) A taxpayer requesting a refund of a payment of an additional assessment of [Corporation Business Tax, Corporation Income Tax, Savings Institution Tax, Transfer Inheritance Tax, Estate Tax, Petroleum Gross Receipts Tax, Tobacco Products Wholesale Tax, Sales and Use Tax or Gross Income Tax] **any tax** pursuant to N.J.S.A. 54:49-14.b is required to use **Claim for Refund of Paid Audit Assessment (Form A-1730)**.

(f)-(g) (No change.)

18:2-5.9 Interest on overpayments

(a) [For tax paid with respect to reports or returns due on and after January 1, 1994, interest shall] **Interest will** be allowed and paid on overpayments of tax at [a rate determined by the Director to be equal to] the prime rate, determined for each month or fraction thereof, compounded annually at the end of each calendar year, from the date that such interest commences to accrue to the date of the refund. "The date of the refund" shall be deemed the date set forth on the check or the documents authorizing electronic funds transfer (EFT). If interest must be paid, it will be calculated to accrue from the later of the date of the filing of a refund claim, the date the tax is paid, or the due date of the return. No interest shall be allowed or paid on an overpayment of less than one dollar; or on an overpayment refunded within six months after the last date prescribed, or permitted by extension of time, for filing the return; or within six months after the return is filed, whichever is later. Interest will not be paid on overpayments where the taxpayer has requested that the overpayment be applied to the [following year's] **taxpayer's** tax liability.

(b) No interest will be paid on a refund of an overpayment issued pursuant to N.J.S.A. 54:49-16 unless and until six months after the taxpayer files a claim for refund. [See N.J.A.C. 18:35-1.27.]

Example 1: Corporation Business Tax Return (calendar year taxpayer)

Due Date:	April 15
Postmarked:	March 2
Return with overpayment received by the Division of Taxation:	March 12

A refund of overpaid taxes would accrue interest if not refunded by October 15 (six months after the due date of the return, April 15).

Example 2: Corporation Business Tax Return (calendar year taxpayer)

Due Date:	April 15
Return and overpayment (unknown to taxpayer at time return was filed) received by Division of Taxation:	April 15
Claim for refund received by Division of Taxation:	May 1

Interest would accrue on an overpayment not refunded by November 1 (six months after the claim for refund date of May 1).

Example 3: Same as above, except no claim filed. The Division of Taxation discovers the overpayment within two years of payment. No interest is due on the refund of the overpaid tax.

(c) (No change.)

18:2-5.10 Separate claims required

[For claims accruing on or after July 1, 1993, each] **Each** taxpayer shall file a separate refund claim. A refund claim on behalf of a class is not permitted. **If a sales and use tax refund claim is submitted by a person required to collect the tax, the refund claim must be able to identify each individual customer, the specific transactions at issue, and the amount of tax paid by each customer. See N.J.A.C. 18:2-5.8(d)4.**

SUBCHAPTER 6. CONFIDENTIALITY AND DISCLOSURE

18:2-6.1 Records confidential

(a)-(b) (No change.)

(c) The Division of Taxation is not required to produce any records or files for inspection of any person or use in any action or proceeding except when the records or files are shown to be directly involved in an action or proceeding under the State [Tax] Uniform **Tax** Procedure Law, N.J.S.A. 54:48-1 et seq., or other State tax law, or where the determination of an action or proceeding will affect the validity or amount of State claims for taxes, or any lawful proceeding for the investigation and prosecution of violations of the criminal provisions of the State [Tax] Uniform **Tax** Procedure Law or other State tax law.

(d) (No change.)

(e) Requests for information from Division records, including requests for information pursuant to N.J.S.A. 54:50-9, should be directed to the Division of Taxation Office of [Chief of Staff] **Legislative Analysis and Disclosure**.

SUBCHAPTER 7. RECORDKEEPING AND RETENTION REQUIREMENTS

18:2-7.2 Definitions

For purposes of this subchapter, the following terms [shall be] **are** defined as follows:

...
 "Machine-sensible record" means a collection of related information in an electronic format. Machine-sensible records do not include hard-copy records that are created or recorded on paper or [stored in or by an imaging system] **hard-copy records that have been converted to an electronic storage medium** such as microfilm, microfiche, or **any other** storage-only imaging systems.
 ...

18:2-7.3 Recordkeeping requirements--general

(a) A taxpayer shall maintain all records that are necessary to a determination of the correct tax liability. All required records [shall] **are to** be made available on request by the Director or his or her authorized representatives. Such records [shall] include, but not [be] necessarily limited to, books of account, invoices, sales receipts, or other documents required to be maintained by any specific tax statute or regulation of this State.

(b) If a taxpayer retains records required to be retained under this section in both machine-sensible and hard-copy formats, the taxpayer [shall] **must** make the records available to the Director in machine-sensible format upon request of the Director.

(c) (No change.)

(d) Nothing in this section shall be construed to prohibit a taxpayer from demonstrating tax compliance with traditional hard-copy documents or reproductions thereof, in whole or in part, whether or not such taxpayer also has retained or has the capability to retain records on electronic or other storage media in accordance with this regulation. However, this subsection [shall] **does** not relieve the taxpayer of the obligation to comply with (b) above.

18:2-7.4 Recordkeeping requirements--machine-sensible records

(a) General requirements pertaining to machine-sensible records are as follows:

1. Machine-sensible records used to establish tax compliance [shall] **must** contain sufficient transaction-level detail information so that the details underlying the machine-sensible records can be identified and made available to the Director upon request. A taxpayer has discretion to discard duplicate records and redundant information provided its responsibilities under this section are met.

2. At the time of an examination, the retained records [shall] **must** be capable of being retrieved and converted to a standard record format.

3. (No change.)

(b) Electronic data interchange requirements are as follows:

1. Where a taxpayer uses electronic data interchange processes and technology, the level of record detail, in combination with other records related to the transactions, [shall] **must** be equivalent to that contained in an acceptable paper record. For example, the retained records [shall] **must** contain such information as vendor name, invoice date, product description, quantity purchased, price, amount of tax, indication of tax status, shipping detail, etc. Codes may be used to identify some or all of the data elements, provided that the taxpayer provides a method which allows the Director to interpret the coded information.

2. (No change.)

(c) Electronic data processing accounting systems requirements are as follows:

1. The requirements for an electronic data processing accounting system [shall] **must** be similar to that of a manual accounting system, in that an adequately designed accounting system [shall] incorporate methods and records that will satisfy the requirements of this subchapter.

(d) Business process information requirements are as follows:

1. Upon the request of the Director, the taxpayer shall provide a description of the business process that created the retained electronic records. Such description [shall] **must** include the relationship between the electronic records and the tax documents prepared by the taxpayer and the measures employed to ensure the integrity of the records.

2.-3. (No change.)

18:2-7.5 Records maintenance requirements

The taxpayer's computer hardware or software [shall] **must be able to** accommodate the extraction and conversion of retained machine-sensible records.

18:2-7.6 Access to machine-sensible records

(a) The manner in which the Director is provided access to machine-sensible records as required in N.J.A.C. 18:2-7.3(b) may be satisfied through a variety of means that [shall] take into account a taxpayer's facts and circumstances through consultation with the taxpayer.

(b) (No change.)

18:2-7.7 Taxpayer responsibility and discretionary authority

(a) (No change.)

(b) A taxpayer may contract with a third party to provide custodial or management services of the records. Such a contract [shall] **does** not relieve the taxpayer of its responsibilities under this subchapter.

18:2-7.8 Alternative storage media

(a) (No change.)

(b) Microfilm, microfiche, and other storage-only imaging systems [shall] **must** meet the following requirements:

1. Documentation establishing the procedures for converting the hard-copy documents to microfilm, microfiche, or other storage-only imaging system [shall] **must** be maintained and made available on request. Such documentation [shall] **must**, at a minimum, contain a sufficient description to allow an original document to be followed through the conversion system as well as internal procedures established for inspection and quality assurance.

2. Procedures [shall] **must** be established for the effective identification, processing, storage, and preservation of the stored documents and for making them available for the period they are required to be retained under N.J.A.C. 18:2-7.10.

3. (No change.)

4. When displayed on such equipment or reproduced on paper, the documents [shall] **must** exhibit a high degree of durability and legibility.

5. All data stored on microfilm, microfiche, or other storage-only imaging systems [shall] **must** be maintained and arranged in a manner that permits the location of any particular record.

18:2-7.9 Effect on hard-copy recordkeeping requirements

(a)-(b) (No change.)

(c) Hard-copy records generated at the time of a credit or debit card transaction [shall] **must** be retained unless all the details necessary to determine correct tax liability relating to this transaction are subsequently received and retained by the taxpayer in accordance with this subchapter. Such details include those listed in N.J.A.C. 18:2-7.4(b)1.

(d) Nothing in this section [shall] prevents the Director from requesting hard-copy printouts in lieu of retained machine-sensible records at the time of examination.

18:2-7.11 Corporations

(a) (No change.)

(b) If a corporation has not maintained records adequate to classify the corporation's income for purposes of establishing tax liabilities, the Division may make an audit determination that certain amounts of unreported income have been distributed to shareholders of the corporation, in the form of salary or dividends. Amounts that cannot be identified as arising from some aspect of the operations of the business will first be deemed to have been distributed to the shareholders as reasonable salary, and includable in the income of the shareholders for purposes of the [Gross Income Tax] **gross income tax** pursuant to N.J.S.A. 54A:5-[1a]1.a. Amounts beyond salary will be deemed to have been distributed to the shareholders as a dividend, and includable in the income of the shareholders for purposes of the [Gross Income Tax] **gross income tax** pursuant to N.J.S.A. 54A:5-[1f]1.f. The Division will utilize commonly accepted [accounting audit] **auditing** practices to make these determinations. Examples of commonly accepted [accounting audit] **auditing** practices are comparisons with other similarly situated

businesses and analyses of information provided by vendors to the business.

SUBCHAPTER 8. SET-OFF OF STATE VENDOR TAX DEBT

18:2-8.1 Definitions

As used in this subchapter, the following words shall have the following meanings:

“Set-off” [shall] means a reduction in the contract payment due to a vendor by the amount of that vendor’s State tax indebtedness or, in the case of a vendor-partnership or vendor-S corporation, by the amount of State tax indebtedness of any member-partner or shareholder of the partnership or S corporation, respectively.

“State” [shall] means the State of New Jersey, including the executive, legislative, and judicial branches, or any agencies or instrumentalities of the State of New Jersey.

“State tax” [shall] means any tax imposed by Titles 54 and 54A of New Jersey Statutes, on individuals or business entities, and collected by the Division of Taxation.

“Taxpayer” [shall] means any vendor who is required to pay or remit a State tax, or, when the vendor is a partnership or S corporation, any partner or shareholder of the vendor-entity who is required to pay or remit a State tax.

“Vendor” [shall] means any individual or entity under contract to provide goods or services to the State, or under contract for construction projects of the State.

18:2-8.4 Set-off of tax liability of a member of a partnership or S corporation under contract with the State

When a partnership or an S corporation is a vendor, the Division may also seek to reduce the contract payment due to that vendor by the amount of the State tax indebtedness of any of that vendor’s partners or shareholders. The amount set off [shall] **may** not exceed the individual partner’s or shareholder’s proportionate share of the contract payment due to the vendor-partnership or vendor-S corporation.

Example 1: (No change.)

Example 2: (No change.)

18:2-8.5 Notice of set-off

(a) The Division [shall] **will** give notice both to the vendor[,] and to the taxpayer, if the taxpayer is a partner or shareholder of the vendor-entity, as soon as the Division takes set-off action under this chapter.

(b) The notice [shall] **will**:

1.-2. (No change.)

(c) A written protest [shall] **must** conform to the requirements of N.J.A.C. 18:1-1.8.

(d) The filing of a protest [shall] **does** not stay the collection of the indebtedness.

SUBCHAPTER 9. SALE OF TAX INDEBTEDNESS

18:2-9.1 Time for sale of indebtedness

(a) The State Treasurer is authorized to sell, transfer, or assign all right, title, and interest in any State tax indebtedness only when the following conditions have been satisfied:

1. The underlying State tax indebtedness is fixed and final and not subject to protest or appeal pursuant to the State [Tax] Uniform Tax Procedure Law or the New Jersey Gross Income Tax Act; and

2. (No change.)

18:2-9.2 Bidding and sale procedures

(a) Public advertisement for bids and sale of tax indebtedness to bidders [shall] **will** be conducted by the Division of Property Management and Construction, which has been designated by the Treasurer to carry out the Treasurer’s responsibilities pursuant to N.J.S.A. 54:50-30.

(b) Pursuant to, and consistent with the authority granted by N.J.S.A. [54:30-35] **54:50-35** and [54:30-29b] **54:50-29.b**, the Director of the Division of Taxation [shall have] **has** the right to approve any specifications and invitations for bids and any forms of contract drafted by the Treasurer’s designee pursuant to this section.

18:2-9.4 Protest or appeal from sale of tax indebtedness

(a)-(b) (No change.)

(c) In any appeal by a taxpayer to the Tax Court challenging the underlying tax indebtedness, made pursuant to N.J.S.A. 54:50-29 et seq., the Director of the Division of Taxation shall be the primary party in interest, and the purchaser of the lien shall also be joined with the Director as a defendant. Such challenge [shall] **must** first have been brought to the Director by protest under N.J.S.A. 54:49-18[,in which protest the purchaser shall also have been joined].

(d) Notwithstanding the purchaser’s joinder in any action or proceeding brought to challenge the underlying indebtedness, the Director [shall have] **has** the sole authority to determine, in the case of a protest, and advocate, in the case of an appeal, whether the matter is fixed and final, whether the [certificate of debt] **Certificate of Debt** is correct and properly entered, and whether and to what extent any relief should be afforded to the taxpayer.

SUBCHAPTER 10. TAX CLEARANCE FOR BUSINESS ASSISTANCE AND INCENTIVES

18:2-10.1 Purpose and scope

(a) This section describes the procedure for the application and issuance of a Tax Clearance Certificate by the Director of the Division of Taxation as evidence that all State taxes, penalties, interest[s], and fees have been paid or provided for, which is required prior to an award of business assistance or incentive by a department or agency of the State government, including independent authorities and instrumentalities of the State.

(b) The procedures provided [within] **in** this subchapter, including the fees that are imposed, only apply [in relation] to a request by a person or business entity applying for tax clearance in order to benefit from business assistance or incentives offered by a New Jersey department or agency including independent authorities and instrumentalities of the State as defined in N.J.A.C. 18:2-10.2. [These] **The rules in this subchapter**, including the imposition of an application filing fee of \$75.00 and an expedited processing fee of \$200.00, are separate and distinct from any other tax clearance procedures that may be established in other provisions of New Jersey law or within other sections of the New Jersey Administrative Code.

18:2-10.2 Definitions

[The] **For purposes of this subchapter**, the following words and terms[, when used in this section, have the following meanings unless the context clearly indicates otherwise] **are defined as follows**:

“Business assistance or incentive” means monetary or financial assistance in any form, other than a tax credit or tax exemption pursuant to a claim made on a tax return filed with the Division of Taxation in the Department of the Treasury, including, but not limited to, a grant, loan, loan guarantee, or other monetary or financial benefit awarded to a person by a department or agency of the State government, including independent authorities and instrumentalities of the State to assist the person or business entity in the conduct or operation of a business, occupation, trade, or profession in the State, in connection with the following programs:

1. Business employment incentive program established pursuant to [P.L. 1996, c. 26 [N.J.S.A. 34:1B-124 et al.]] **seq.**;

2. The business retention and relocation program established pursuant to [P.L. 1996, c. 25 [N.J.S.A. 34:1B-112 et seq.]];]

3. The customized training services provided pursuant to [section 5 of P.L. 1992, c. 43 [N.J.S.A. [34:15D-5]]] **34:15D-5**;

4.-6. (No change.)

7. Any other similar State program that confers a significant monetary or financial benefit upon a business or businesses, as prescribed by the State Treasurer pursuant to rules promulgated pursuant to the Administrative Procedure Act, [P.L. 1968, c. 140 [N.J.S.A. 52:1B-1 et seq.]].]

“Business entity” means a person as referenced in [P.L. 2007, c. 101 [N.J.S.A. 54:50-39]], corporation, partnership or limited liability company, or sole proprietor, whether organized under the laws of this State or under the laws of any other state or foreign jurisdiction, which is subject to taxation under any state tax law. All persons and business

entities must be registered to operate a business, occupation, trade, or profession in this State.

“Taxes” means all reports, returns, documents, taxes, fees, penalties, interest, and costs required under any tax law of the State of New Jersey [which] **that** are required to be paid or remitted to or collectible by the Director.

18:2-10.3 Requirements for Tax Clearance Certificate

(a) The person or business entity applying for business assistance or incentive shall apply to the Director for a Tax Clearance Certificate and provide the information necessary for the Director to make a determination that the applicant is compliant with New Jersey tax laws and has satisfied all requirements for filing State tax and information returns, and for paying State taxes [for] which the applicant [has been] **is** liable **for** as a taxpayer or collector of tax.

(b) (No change.)

18:2-10.5 Interim Tax Clearance Certificate

(a) If the Director determines that the person or business entity has not filed all of the required tax and information returns or has not paid all tax, penalties, interest, or fees due, the Director shall issue a notice of delinquency or deficiency listing unfiled returns or balances due. The Director may require a person to resolve all delinquencies and deficiencies before a Tax Clearance Certificate is issued, or upon review of the total circumstances, the Director may issue an Interim Tax Clearance Certificate if it has been established to the satisfaction of the Director that the person or entity will resolve all such delinquencies or deficiencies within a specified time period.

1. The issuance of an Interim Tax Clearance Certificate is solely at the discretion of the Director based upon the receipt and confirmation of information that will allow the Director to determine that it is in the best economic interest of the State to [allow the applicant to be granted the assistance or incentive it is applying for] **issue the Interim Tax Clearance Certificate** prior to [receiving tax clearance so as not to impede economic commerce] **full payment of all tax delinquencies and deficiencies.**

2. Prior to an [interim certificate] **Interim Tax Clearance Certificate** being issued to an applicant who may have **outstanding** tax issues to resolve, the Director shall determine and demand a pre-payment of **those** tax liabilities to be held in escrow.

18:2-10.6 No waiver of authority to resolve tax matters

The issuance of a regular or an [interim] **Interim Tax Clearance Certificate** [shall] **does** not constitute a waiver of authority to demand resolution of all deficiencies and delinquencies and [shall] **will** not prevent further audit or the assessment of additional taxes, penalties, interest, fees, or costs as may be provided by law.

(a)

DIVISION OF TAXATION

Controlling Interest Transfer Tax

Proposed Redoption: N.J.A.C. 18:16A

Authorized By: Dennis Shilling, Acting Director, Division of Taxation.

Authority: N.J.S.A. 54:15C-1.e(4) and 54:50-1.

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

Proposal Number: PRN 2015-090.

Submit written comments by October 2, 2015, to:

Elizabeth J. Lipari
 Administrative Practice Officer
 Division of Taxation
 Director’s Office
 PO Box 240
 50 Barrack Street
 Trenton, NJ 08695-0240
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The agency proposal follows:

Summary

Pursuant to Executive Order No. 66 (1978) and N.J.S.A. 52:14B-5.1, N.J.A.C. 18:16A expires on July 7, 2015. Since this notice of proposed redoption has been filed with the Office of Administrative Law prior to July 7, 2015, the expiration date of this chapter is extended 180 days to January 3, 2016, pursuant to N.J.S.A. 52:14B-5.1.c(2). The Division of Taxation has reviewed these rules and has determined them to be necessary, reasonable, and proper for the purposes for which they are being proposed.

The rules proposed for redoption fulfill the statutory mandates of N.J.S.A. 54:15C-1. This statute imposes a controlling interest transfer tax of one percent on the transferee for certain transfers of controlling interest in entities possessing a controlling interest in Class 4A commercial property.

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 rules proposed for redoption will likely have a beneficial social impact because the rules provide the public, real estate owners, prospective controlling interest purchasers, and their advisers with information and guidance about purchaser’s responsibilities and liabilities, if any, under the controlling interest transfer tax law and clarify when the merger or acquisition exemption applies.

Economic Impact

The rules proposed for redoption would generally be revenue neutral since the rules clarify the application of the controlling interest transfer tax law, including when the merger or acquisition exemption applies. The controlling interest transfer tax imposes a tax on the purchaser in a non-deed transfer of a controlling interest in an entity that owns Class 4A commercial properties if the total consideration for the transfer is in excess of one million dollars or if the equalized assessed value of the class 4A commercial property in New Jersey is greater than one million dollars where there are other assets involved in the transfer. That tax is equal to one percent of the full amount paid for the transfer or one percent of the equalized assessed value of the Class 4A commercial property where there are other assets being transferred in addition to the Class 4A commercial property. The rules proposed for redoption will have a positive effect by clarifying the definitions and exemptions relating to the controlling interest transfer tax.

Jobs Impact

The rules proposed for redoption will have no impact upon jobs in the State.

Federal Standards Statement

A Federal standards analysis is not required because there are no Federal standards or requirements applicable to the rules proposed for redoption. The rules pertain solely to New Jersey law and policy.

Agriculture Industry Impact

The rules proposed for redoption will have no impact on the agriculture industry.

Regulatory Flexibility Statement

The Division of Taxation, consistent with its mission, reviews its rules with a view to minimizing the impact of its rules on small businesses to the extent possible. The mission of the Division is to administer the State’s tax laws uniformly, equitably, and efficiently to maximize State revenues to support public services, and to ensure that voluntary compliance within the taxing statutes is achieved without being an impediment to economic growth.

The rules proposed for redoption apply to any transferee of a controlling interest in entities possessing a controlling interest in Class 4A commercial property, including a transferee that may be considered a small business as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The Division has reviewed the application of the Regulatory Flexibility Act to the rules proposed for redoption and because the tax rules must be applied uniformly and equitably, the