

# Chapter 1

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## General Administrative Provision for New Jersey State Taxes

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<sup>1</sup> The author wishes to acknowledge that this chapter is an update to the chapter written by Alan Rubin, Cole Schotz P.C., which appeared in previous editions of this book.

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## **1-1 DIRECTOR, DIVISION OF TAXATION— OVERVIEW**

Most taxes are administered by the Director of the Division of Taxation in the Department of Treasury. The Director has the power to do the following: conduct hearings and investigations; subpoena witnesses; administer oaths; investigate and examine assessors and change assessments [N.J.S.A. 54:1-6 through 54:1-26]. In regard to state taxes, the State Uniform Tax Procedure Law found at N.J.S.A. 54:48-1 through 54:54-6 supplements the assessment and collection procedures of the various state taxes administered by the Director. The State Uniform Tax Procedure Law is applied unless a particular state tax statute controls [N.J.S.A. 54:48-4].

## **1-2 CLOSING AGREEMENTS**

The Director is authorized to enter into a written agreement concerning liability for any state tax. A closing agreement may be entered in any case where it appears advantageous to permanently and conclusively close it, or if the taxpayer shows good and sufficient reasons for closing it and the director determines such agreement will not disadvantage the State. A case may not be reopened as to matters covered by a closing agreement except on a showing of fraud, malfeasance or misrepresentation of fact. A request for a closing agreement relating to prior taxable periods may be submitted at any time before a case with respect to the tax liability involved is filed in Tax Court [N.J.S.A. 54:53-1 - 54:53-6].

### 1-3 COMPROMISES

The Director may compromise criminal and civil penalties arising under the tax laws prior to referral to the Attorney General for prosecution or defense, but only when there is doubt as to liability or collectability. A compromise agreement may relate to civil or criminal liabilities for taxes, interest, ad valorem or specific penalties. Only criminal tax liabilities involving violation of a regulatory provision or related statute in Title 54 or 56 that were not deliberately committed with intent to defraud may be compromised. Offers must be in writing and relate to the total liability of the taxpayer, and taxpayers may be required to enter into a collateral agreement or post security as a condition to the offer being accepted. An offer will not automatically stay the collection process. However, enforcement of collection may be deferred only if the interests of the state are not jeopardized.

The Director may compromise the time for payment of a liability arising under the state tax laws, but only on the grounds that:

(1) the equities of the taxpayer's liability indicate that a compromise would be in the state's interest, and (2) without such a compromise, the taxpayer would experience extreme financial hardship. A delayed payment or installment payment compromise agreement must include interest on the unpaid balance of the liability at the rate of three percentage points above the prime rate.

No compromised matters may be reopened unless there has been falsification or concealment of assets by the taxpayer, mutual mistake as to a material fact which would cause a contract to be set aside or a significant change in the financial condition of a taxpayer with whom the Director has entered into an agreement regarding the time for payment of a tax liability.

The Director may require the taxpayer to provide periodic statements of financial condition. Action may be taken by the Director against taxpayers with whom the Director has entered into an agreement regarding the time for payment of a tax liability, provided the Director gives notice 30 days before the date of any action and the notice states the reasons the Director has for believing that a significant change in the financial condition of the taxpayer has occurred [N.J.S.A. 54:53-7 - 54:53-15].

**1-4 EXAMINATION OF TAXPAYER'S RECORDS**

The Director may examine the taxpayer's place of business, tangible personal property, books, records, papers, vouchers, accounts and documents [N.J.S.A. 54:50-2]. If the Director conducts an examination of the books, records, papers, vouchers or accounts of a taxpayer on the premises of the taxpayer's agent, the taxpayer will provide the agent written evidence that the agent is authorized to act on their behalf in making any application, deposition, statement or report required by the Director in the administration of any tax law. The agent must then produce the authorization to the Division of Taxation representative [N.J.S.A. 54:50-2.1].

If a Division of Taxation employee conducts an in-person interview with a taxpayer regarding a determination or collection of tax, the employee must, upon the taxpayer's advance request, allow the taxpayer to record the interview, with the taxpayer's equipment and at the taxpayer's expense, provided that the Division of Taxation employee also has the right to record. If the taxpayer is given advance notice, the employee may also record the interview provided that the employee gives the taxpayer a copy of the recording upon reimbursement for the cost of the copy by the taxpayer [N.J.S.A. 54:50-2.2].

If the employee conducts an interview regarding the determination or the collection process of a tax, the employee must provide the taxpayer with explanations of the audit process or the collection process and the taxpayer's rights pursuant to that process [N.J.S.A. 54:50-2.2].

**1-5 HEARINGS**

The commissioner, or any employee of the state tax department appointed by the commissioner, may conduct hearings, administer oaths to, and examine under oath any taxpayer or directors, officers, agents and employees of the taxpayer, as well as any other witnesses relative to the business of such taxpayer in respect to any state tax law. The Director may subpoena to compel the attendance of a witness and the production of any books, records, papers, vouchers, accounts or documents of any taxpayer or person that the Director has reason to believe has information relevant to the investigation. If a person is subpoenaed to attend a hearing and fails to appear or produce the requested information, the Director

may apply to the Superior Court for an order compelling them to do so [N.J.S.A. 54:50-3 - 54:50-5].

### **1-6 DIRECTOR'S RECORDS**

The records and files of the Director regarding the State Uniform Tax Procedure Law or any New Jersey State tax shall be confidential and privileged. Neither the Director nor any employee shall be required to produce any of these records or files for the inspection of any person or for use in any action or proceeding, unless the records or files are directly involved in an action or proceeding under provisions of the State Uniform Tax Procedure Law or state tax law affected, or where the determination of the action will affect the validity or amount of the claim of the state under some state tax law, or in any lawful proceeding for the investigation and prosecution of any violation of the criminal provisions of the State Uniform Tax Procedure Law or of any state tax law [N.J.S.A. 54:50-8].

### **1-7 PERSONAL LIABILITY OF TAXPAYER—TAX LIENS—WARRANT**

Any state tax, fee, interest or penalty becomes a personal debt of the taxpayer to the state, recoverable in the New Jersey courts, on its due date. The debt, whether sued upon or not, is a lien on all the property of the debtor, except as against an innocent purchaser for value in the usual course of business and without notice, and except as may be provided to the contrary in any other law, and has preference in the distribution of assets, whether in bankruptcy, insolvency or otherwise. [N.J.S.A. 54:49-1].

The Director of the Division of Taxation may release any property from the lien of any certificate, judgment or levy procured by the Director upon either the payment of adequate consideration or the deposit of adequate security. [N.J.S.A. 54:49-13].

The Director is also authorized to issue a warrant, directed to the sheriff of any county or to an officer or employee of the Division of Taxation, for a levy upon and sale of the property of any person liable for a state tax. [N.J.S.A. 54:49-13a].

### **1-8 AGREEMENTS WITH OTHER STATES**

For purposes of administering the State Uniform Tax Procedure Law or any state tax law, the Director may enter into agreements

with other states, the District of Columbia or the United States providing for reciprocal enforcement and administration of any tax imposed by those jurisdictions. Duly authorized officers of other jurisdictions that reciprocate can sue for collection of their taxes in New Jersey courts [N.J.S.A. 54:50-2].

The Division of Taxation may enter into an agreement with the taxing authorities of any state which imposes a tax on or is measured by income to provide that compensation paid in such state to residents of New Jersey shall be exempt from such tax; in such case any compensation paid in New Jersey to residents of such state shall be exempt from New Jersey personal income tax. The Division, in such agreements, may provide for reciprocal withholding, employer liability, exchange of information and all other matters relating to cooperation between the states. [N.J.S.A. 54A:9-17(e)]. New Jersey has a reciprocal personal income tax agreement with Pennsylvania [Reciprocal Personal Income Tax Agreement between Commonwealth of Pennsylvania and State of New Jersey, 19 October 1977]. New Jersey also has an income tax information exchange agreement with the northeastern states and reciprocal recognition of sales tax credit with many states.

If the state treasurer finds that: (1) the laws of another jurisdiction offer tax advantages to residents of New Jersey contingent on agreement that New Jersey will furnish information about residents of that jurisdiction who work in New Jersey, and (2) an agreement would be lawful and not too burdensome, the treasurer can make an exchange of information agreement. The treasurer must file their finding with the secretary of state [N.J.S.A. 34:11-33.3]. If an agreement with a foreign taxing jurisdiction is in force, the Division of Taxation can require employers to provide information in regard to names and address, in such jurisdiction, of persons employed by them who reside in such jurisdiction [N.J.S.A. 34:11-33.4].

Firms employing persons in New Jersey who are residents of a foreign taxing jurisdiction, signatory to a tax advantage agreement described above, can deduct and withhold for crediting such amount on account of such income or wage tax due from such employee to the other jurisdiction. Such amount is held in trust for the other jurisdiction [N.J.S.A. 34:11-33.6]. No employer can withhold or divert any portion of an employee's wages unless [N.J.S.A. 34:11-4.4]:

- 1) the employer is required or empowered to do so by law; or
- 2) the amounts withheld or diverted are for contributions authorized in writing by employees, or under a collective bargaining agreement, to employee welfare, insurance, hospitalization, medical or surgical or both, pension, retirement and profit-sharing plans, and to plans establishing individual retirement annuities, or individual retirement accounts at any state or federally chartered bank, savings bank or savings and loan association, for the employee, their spouse or both; or
- 3) the amounts withheld or diverted are for contributions authorized by employees for payment into company-operated thrift plans; or security option or security purchase plans to buy securities of the employing corporation, an affiliated corporation or other corporations at market price or less, provided such securities are listed on a stock exchange or are marketable over the counter; or the amounts withheld or diverted are for payments authorized by employees into employee personal savings accounts or savings funds, provided all such deductions are approved by the employer; or
- 4) the amounts withheld or diverted are for payments for company products purchased in accordance with a periodic payment schedule contained in the original purchase agreement; payments for employer loans to employees, in accordance with a periodic payment schedule contained in the original loan agreement; payments for safety equipment; payments for the purchase of United States Government bonds; payments to correct payroll errors; and payments of costs and related fees for the replacement of employee

identification, provided all such deductions are approved by the employer; or

- 5) the amounts withheld or diverted are for contributions authorized by employees for organized and generally recognized charities, provided the deductions for such contributions are approved by the employer; or
- 6) the amounts withheld or diverted are for payments authorized by employees for the rental or cleaning of work clothing or uniforms, provided the deductions for such payments are approved by the employer; or
- 7) the amounts withheld or diverted are for labor organization dues and initiation fees, and such other labor organization charges permitted by law; or
- 8) the amounts withheld and diverted are for contributions authorized in writing by employees, pursuant to a collective bargaining agreement, to a political committee, continuing political committee, or both, established by the employees' labor union for the purpose of making contributions to aid or promote the nomination, election or defeat of any candidate for a public office, subject to the conditions specified in N.J.S.A. 34:11-4.4a; or
- 9) the amounts withheld or diverted are for contributions authorized in writing by employees to any political committee, for the purpose of making contributions to aid, defeat, or promote any candidate for a public office, subject to the conditions specified in N.J.S.A. 34:11-4.4a; in making a payroll deduction pursuant to this paragraph the administrative expenses incurred by the employer shall be borne by such committee, at the option of the employer; or
- 10) the amounts withheld or diverted are for payments authorized by employees for employer-sponsored programs for the purchase of insurance



or annuities on a group or individual basis, if otherwise permitted by law; or

- 11) the amounts withheld or diverted are for such other contributions, deductions and payments as the Commissioner of Labor may authorize by regulation as proper and in conformity with the intent and purpose of this act, if such deductions are approved by the employer [N.J.S.A. 34:11-4.4].

### **1-9 COLLECTION OF OTHER STATES' TAXES IN NEW JERSEY COURTS**

New Jersey courts will enforce other states' sales-use taxes on a reciprocal basis, so long as such state has a reciprocal agreement to permit New Jersey to enforce its sales and use tax collection in such state [N.J.S.A. 54:32B-23].

Duly authorized officers of other jurisdictions that have reciprocal agreements with New Jersey may sue for collection of their taxes in New Jersey courts [N.J.S.A. 54:50-2].

To enforce its taxes owed by New Jersey residents in New Jersey courts, the City of Philadelphia had to resort to the Full Faith and Credit Clause of the U.S. Constitution. *City of Philadelphia v. Austin*, 86 N.J. 55, 429 A.2d 568 (1981). This requires each state to honor judgments made in other states' courts (U.S. Const. art. IV, § 1).

### **1-10 DELINQUENT CORPORATIONS**

If a domestic corporation does not pay any state tax assessed against it for two consecutive years, the Director of the Division of Taxation must report this to the secretary of state by the first Monday in January. The secretary must proclaim such corporation's charter void. The secretary can extend the time for payment. The secretary can correct errors in the list and proclaim charters still valid [N.J.S.A. 54:11-1, 54:11-2, 54:11-4].

A corporation's charter and privileges can be reinstated on payment to the secretary of state of a reasonable sum in lieu of taxes and penalties as determined by him or her and the attorney general. Such sum cannot be less than the fees required for filing the original certification of incorporation. These

provisions for reinstatement do not apply to gas, electric light, telephone, telegraph, water, pipeline, Street Railway Company or other corporations with the right to use public streets or to take and condemn lands [N.J.S.A. 54:11-5].

## **1-11 ASSESSMENTS BY THE DIRECTOR OF THE DIVISION OF TAXATION**

The State Uniform Tax Procedure Law gives the Director of the Division of Taxation the power to make assessments.

When a return is filed, the Director may issue a deficiency assessment. The Director may determine that there is a deficiency with respect to the payment of tax upon examination of the taxpayer's return and/or upon an audit or investigation. The Director assesses the additional taxes, penalties and interest (imposed as in the case of delinquent payment), gives notice of the assessment to the taxpayer and makes a demand upon the taxpayer for payment. [N.J.S.A. 54:49-6].

If a taxpayer fails to make any report required by law, the Director can make an arbitrary assessment from such information he or she can obtain. If the taxpayer fails to file a report as required, the Director may estimate the tax liability from any available information and may assess taxes, fees, penalties and interest due from the taxpayer. The Director must give notice to the taxpayer and make demand upon the taxpayer for payment. [N.J.S.A. 54:49-5].

If the Director has reason to believe that the taxpayer plans to remove the taxpayer or the taxpayer's property from the state, the Director is authorized to make a jeopardy assessment, even if no return is due. Under such arbitrary assessment, the Director may proceed to collect the tax or compel security for the tax and thereafter give notice of the finding to the taxpayer, along with a demand for an immediate report and immediate payment of tax [N.J.S.A. 54:49-7].

The State Uniform Tax Procedure Law requires the taxpayer to pay all taxes, penalties and interest within 15 days after a demand by the Director following an arbitrary or jeopardy assessment. If the sum demanded is not paid within 15 days, an additional penalty in the amount of five percent of the tax is imposed [N.J.S.A. 54:49-8, 54:49-9].

Notices of assessment related to final audit determination and “Notice and Demand for Payment of Tax” letters are sent by registered or certified mail [N.J.S.A. 54:50-6.1].

### **1-12 LIMITATIONS ON ASSESSMENT**

Assessments of additional tax may not be made more than four years from the date of the filing of a return, unless a shorter time is provided in the particular state tax statute or a longer time is consented to by the taxpayer. (Postmark date is the filing date for all state tax returns.) The tax may be assessed at any time in the case of a false or fraudulent return with intent to evade the tax, or failure to file a return.

If a shorter time for the assessment of additional tax is fixed by the law imposing the tax, the shorter time governs.

Taxpayers may consent in writing to an extension of time for assessment of tax, in which case the amount of such additional tax due may be determined at any time within the extended period. The period may be further extended by subsequent consents in writing made before the expiration of the extended period [N.J.S.A. 54:49-6].

### **1-13 PROTESTS; HEARING BY THE DIRECTOR**

A taxpayer may request a hearing at the Division of Taxation level by filing a protest within 90 days of the date of the finding or notice of assessment. The protest should be in writing, signed and certified to be true by the taxpayer or his duly authorized agent and should set forth the taxpayer’s position and basis for the protest. [N.J.S.A. 54:49-18].

The administrative hearing is an informal conference handled by a conferee within the Hearings and Conference Branch of the Division. It is one further opportunity for the taxpayer to present their case to the Division in the hopes of reaching a favorable compromise. The Director will issue a final determination letter at the conclusion of the hearing process which is subject to judicial review in the Tax Court if the taxpayer files a complaint within 90 days of such final determination.

The taxpayer is not required by statute to request an administrative hearing and may instead file a complaint directly in the

Tax Court (within 90 days of the date of the finding or notice of assessment). [N.J.S.A. 54:49-18; N.J.S.A 54:51A-14].

Any taxpayer that did not protest or appeal an assessment may file a claim for refund of the assessment if full payment of such assessment is made within one year after the original 90-day protest period for assessment expired and if the claim is filed within 450 days after the assessment protest period expired [N.J.S.A. 54:49-14].

### **1-14 PAYMENT OF TAX—REGULAR ASSESSMENTS**

The filing of a protest or appeal will generally stay the collection of tax until 90 days after the Director's final determination, provided the taxpayer furnishes security where required. Security is generally not required where the amount is less than \$10,000. Contested assessments of more than \$10,000 do not require security unless there is a substantial risk, based upon history and financial condition, that the taxpayer will fail or will be unable to pay [N.J.S.A. 54:49-2, 54:49-18].

### **1-15 PAYMENT OF TAX IN REGARD TO ARBITRARY OR JEOPARDY ASSESSMENTS**

The taxpayer is required to pay all taxes, penalties and interest within 15 days after a demand by the Director following an arbitrary or jeopardy assessment. The law provides that if the sum demanded is not paid within 15 days, an additional penalty in the amount of five percent of the tax is imposed. The filing of a protest shall stay the right of the director to collect the tax in any manner until 90 days after final determination by the director, provided the taxpayer furnishes any security required by the Director. [N.J.S.A. 54:49-8, 54:49-9, 54:49-18].

### **1-16 APPEALS TO THE TAX COURT**

Any party who is dissatisfied with the judgment, action or determination of the county board of taxation may seek review in the Tax Court by filing a complaint in the Tax Court. At the time the complaint has been filed seeking review, all taxes or installments thereof then due and payable for the year for which review is sought must have been paid, although the Tax Court may

choose to relax the requirement in the interest of justice. There will be no review if the appeal has been withdrawn at the hearing, dismissed because of failure to prosecute the appeal at a hearing called by the county tax board, or settled between the taxpayer and the assessor of the taxing district [N.J.S.A. 54:51A-1].

A taxpayer has 90 days to appeal to the Tax Court from a final determination letter of the Director. The New Jersey Tax Court was created in 1979 to hear and determine cases involving state taxation and local property taxation. An appeal from an action, proceeding, ruling, decision, order or judgment of the Director of the Division of Taxation is made to the New Jersey Tax Court.

An appeal to the Tax Court is the exclusive remedy of a taxpayer in controversies over decisions of the Division of Taxation or any other state taxing authority. The court has published hundreds of judicial opinions on all aspects of state and local taxation. Any attorney admitted to practice before the New Jersey Supreme Court may appear in the Tax Court. Accountants and corporate officers may not appear in the Tax Court on behalf of clients. The court hears cases without a jury. The rules governing practice and procedure in the Tax Court are set forth in Part VIII of the New Jersey Court Rules.

Once a complaint is filed, the discovery process starts, which involves pretrial conferences and interrogatories. During this phase of the litigation, it is possible for settlements to be worked out with the Director through the deputy attorney general.

A prevailing taxpayer in a court proceeding in connection with the determination, collection or refund of any tax, penalty or interest may be awarded a judgment or settlement or reasonable litigation costs, not to exceed \$15,000, incurred in the proceedings, based upon: (1) the reasonable expenses of expert witnesses; (2) the reasonable costs of studies, reports or tests; and (3) the reasonable fees of attorneys, not to exceed \$75 per hour, unless the court specially determines the existence of a special factor.

The award may be made only for the costs allocable to the state, and not to any other party. No award may be made with respect to any portion of the proceedings during which the prevailing taxpayer has unreasonably protracted the proceedings. The term “prevailing taxpayer” refers to a taxpayer who, in the decision of

the court, establishes that the position of the state was without reasonable basis in fact or law.

Whenever it appears to the court that proceedings have been instituted or maintained by the taxpayer primarily for delay, that the taxpayer's position in the proceedings is without grounds, or that the taxpayer unreasonably failed to pursue administrative remedies, the state may be awarded a judgment or settlement for its reasonable litigation costs, not to exceed \$15,000, incurred in the proceedings [N.J.S.A. 54:51A-13 - 54:51A-23].

### **1-17 REFUNDS**

Effective July 1, 1993, refund claims may be filed within four years after the payment of any original or additional tax (unless a shorter limit is fixed by the law imposing the tax) [N.J.S.A. 54:49-14]. A three-year limitation is specified for personal income tax from the time the return was filed or 2 years from the time the tax was paid (whichever is later). [N.J.S.A. 54A:9-8].

Prior to July 1, 1993, claims for refund were to be filed within two years after payment of tax. A denial of refund must be protested within 90 days [N.J.S.A. 54:49-18]. The taxpayer has 90 days to appeal to the Tax Court from a final determination of the Director denying a refund [N.J.S.A. 54:51A-14(a)]. The taxpayer must be notified if the claim for refund is rejected in whole or in part.

The signing of an agreement by the taxpayer and the Director extending the period for assessment specifically extends the period for filing a claim for refund. Each taxpayer is required to file a separate refund claim.

If, upon examination of a refund claim, it is determined that there has been an overpayment of tax, the amount of the overpayment and the interest on the overpayment, if any, will be credited against any liability of the taxpayer under any state tax law. If the taxpayer has no liability, the taxpayer will be entitled to a refund of the tax so overpaid and the interest on the overpayment, if any.

Interest is paid on overpayments of tax at the prime rate as determined by the Director for returns due and filed after January 1, 1994. Interest accrues from the latter of the date on which the taxpayer files a claim for refund or requests adjustment, the date on which the tax is paid or the due date of the report or return. No interest may be paid on an overpayment of less than

\$1, nor upon overpayments refunded within six months after the latter of the last date prescribed (or permitted by extension of time) for filing the return or the actual date on which the return is filed [N.J.S.A. 54:49-14 - 54:49-16; N.J.A.C. 18:2-5.9].

### **1-18 TAX CLEARANCE**

Until all state taxes (including fees, penalties and interest) are paid, or provision for payment has been made as noted below, no domestic corporation or foreign corporation subject to New Jersey tax may merge or consolidate into a foreign corporation not authorized to do business in New Jersey. Further, no domestic corporation may dissolve, and no domestic or foreign corporation may distribute its assets in dissolution or liquidation to any shareholder. These provisions do not apply to a merger or consolidation of a domestic corporation into a domestic or authorized foreign corporation.

The Secretary of State is not permitted to accept a certificate of dissolution, merger or consolidation of a domestic corporation, or issue a certificate of withdrawal to a foreign corporation, unless the company files a tax clearance certificate issued by the Director of the Division of Taxation not more than 45 days prior to the effective date of the corporate action.

Generally, the Director will issue a tax clearance certificate only if all taxes due have been paid, including taxes shown on an estimated return for the period between the due date of the last regular return and the effective date of the action. However, the tax clearance may be obtained without prior payment of the estimated taxes if:

- 1) another domestic or authorized foreign corporation certifies that it will make timely payment of all taxes due by the company applying for clearance, and that the certifying company has a net worth of at least 10 times the amount of taxes paid by the applicant for the last complete tax year; or
- 2) in the case of dissolution, or distribution of assets in dissolution or liquidation, timely payment is guaranteed by the shareholders of domestic or authorized foreign corporations which own a majority of the applicant's stock, or by a domestic

or authorized foreign corporation acquiring the applicant's assets in exchange for the guarantor's stock. An opinion by a New Jersey attorney that all requirements have been met must be included.

The Director may also require evidence that an unauthorized corporation which is a party to the transaction has paid any taxes owed to the state [N.J.S.A. 54:50-12 - 54:50-18].

### **1-19 INTEREST ON DELINQUENT TAXES**

After July 1, 1993, the interest is the prime rate plus three points and not compounded. N.J.A.C. § 18:2-2.11 defines "prime rate" as 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 payment was due. Interest is calculated from the date the tax was originally due until the date of actual payment. At the end of each calendar year, any tax, penalty and interest remaining unpaid becomes part of the balance on which interest is charged [N.J.S.A. 54:48-2, 54:49-3, 54:49-6, 54:49-10].

### **1-20 PENALTIES ON DELIQUENT TAXES; AMNESTY; SPECIAL RULES**

Civil penalties are provided as follows:

- 1) Late filing—\$100 per month plus 5 percent of deficiency per month, up to 25 percent maximum [N.J.S.A. 54:49-4]. For Gross Income Tax, penalty is assessed based on the outstanding tax balance.
- 2) Late payment—Unless any part of any underpayment of tax required to be shown on a return or report is shown to be due to reasonable cause, there shall be added to the tax an amount equal to 5 percent of the underpayment [N.J.S.A. 54:49-4; 54A:9-6]. If any part of a deficiency is due to negligence or intentional disregard of the New Jersey Gross Income Tax Act (but without intent to defraud), there shall be added to the tax an



amount equal to 10 percent of the deficiency [N.J.S.A. 54A:9-6(b)].

- 3) Fraud—50 percent of assessment [N.J.S.A. 54:49-9.1]; additional \$5,000 with respect to the New Jersey Gross Income Tax Act [N.J.S.A. 54A:9-6(i)].
- 4) Failure to file declaration or underpayment of estimated tax. *See* N.J.S.A. 54A:9-6(c) for more details.
- 5) Failure to provide tax preparer ID number—\$25 per failure [N.J.S.A. 54:50-20].
- 6) Failure by a tax preparer or taxpayer to file a tax return or remit payment electronically as required by law—\$50 per failure [N.J.S.A. 54:49-4].
- 7) Bad checks returned for insufficient funds—\$50 per check. [N.J.S.A. 54:49-12.6].
- 8) Cost of collection—
  - a) If judgment is entered, in lieu of actual cost of collection, the fee is greater of 5 percent of tax or \$100.
  - b) If certificate of debts is entered, in lieu of actual cost of collection, the fee is greater of 10 percent of tax or \$200.
  - c) If suit is instituted, in lieu of actual cost of collection, the fee is greater of 20 percent of tax or \$500.

[N.J.S.A. 54:49-12.1]

*Amnesty Programs.* New Jersey has instituted Tax Amnesty Programs including as follows: from April 15, 2002 until June 10, 2002, for state liabilities for tax returns due on and after January 1, 1996, and prior to January 1, 2002; from May 4, 2009 until June 15, 2009, for state liabilities for tax returns due on and after January 1, 2002, and prior to February 1, 2009; and from November 15, 2018 until January 15, 2019, for state liabilities for tax returns due on and after February 1, 2009, and prior to September 1, 2017. An unabatable 5 percent penalty will be imposed and an additional

collection fee may also be imposed for any liability that was amnesty eligible but was not satisfied during the applicable amnesty period. This is in addition to all other penalties, interest and other costs [N.J.S.A. 54:53-18 - N.J.S.A. 54:53-20]. This amnesty penalty, however, is not intended to apply to deficiencies assessed as a result of a routine audit of a taxpayer that is otherwise in compliance with state tax filing and payment requirements. *United Parcel Serv. Gen. Servs. Co. v. Dir., Div. of Taxation*, 220 N.J. 90, 103 A.3d 260 (2014).

*Special rule for mandatory combined returns.* In the first tax year that a mandatory combined return is due under N.J.S.A. 54:10A-5.41 et seq., no penalties or interest will accrue due to underpayment that may result from the switch from separate returns to mandatory combined returns, and any overpayment by a member of the combined group from the prior tax year will be credited as an overpayment of the tax owed by the combined group, credited toward future estimated payments by the combined group [N.J.S.A. 54:10A-4.12].

## 1-21 CRIMINAL PENALTIES

Criminal penalties may be imposed on a taxpayer that acts with intent to defraud the state or evade the tax, including as follows:

- 1) Providing false return or false information—crime of the fourth degree [N.J.S.A. 54:52-7].
- 2) Failure to file a return—crime of the third degree [N.J.S.A. 54:52-8].
- 3) Failure to pay or turn over taxes—crime of the third degree [N.J.S.A. 54:52-9].
- 4) Filing or preparing false or fraudulent return or assisting in filing or preparing false or fraudulent return—crime of the third degree [N.J.S.A. 54:52-10].
- 5) Maintaining or preparing false or fraudulent books or records—crime of the third degree [N.J.S.A. 54:52-11].
- 6) Failure to maintain required books and records—crime of the third degree [N.J.S.A. 54:52-12].

- 7) Failure to be registered—crime of the fourth degree [N.J.S.A. 54:52-13].
- 8) Failure to collect or withhold tax—crime of the third degree [N.J.S.A. 54:52-14].

Criminal penalties may also be imposed on taxpayers for the following:

- 1) Purposeful failure to turn over withheld or collected taxes [N.J.S.A. 54:52-15].
  - a) If the amount is less than \$75,000, crime of the third degree.
  - b) If the amount is \$75,000 or more, crime of the second degree.
- 2) Knowing operation under a voided corporate charter—crime of the fourth degree [N.J.S.A. 54:52-16].
- 3) Knowingly dealing with unlicensed persons and assisting such person in avoiding or evading any State tax [N.J.S.A. 54:52-17].
- 4) Knowingly possessing goods which are required to be taxed and on which the tax has not been paid—disorderly persons offense [N.J.S.A. 54:52-18].
- 5) Knowing verification of false or fraudulent statement; false testimony at hearing—crime of the fourth degree [N.J.S.A. 54:52-19].

**1-22 WAIVER OF PENALTIES**

The Director of the Division of Taxation may remit or waive penalties (other than post-amnesty penalties) in whole or in part if the failure to make timely payment of certain deficiency assessment is satisfactorily explained [N.J.A.C. 18:2-2.7]. He or she may also remit or waive the payment of any interest charge in excess of the rate of three percentage points above the prime rate, as effective July 1, 1993 [N.J.S.A. 54:49-11]. A taxpayer should articulate in a written statement the factual and legal basis for requesting the penalty abatement. Regulations adopt a “reasonable cause” standard for abatement [N.J.A.C. 18:2-2.7].

The Director shall waive the payment of any penalty or interest if:

- 1) an employee of the Division of Taxation acting in their official capacity furnished written advice;
- 2) the advice is based on adequate and accurate information from the taxpayer;
- 3) the advice is erroneous; and
- 4) the taxpayer reasonably relied on the advice [N.J.S.A. 54:49-11(b)].

The New Jersey Tax Court has jurisdiction to review the determination of the Director not to waive a penalty and interest. The determination of the Director, however, should not be overruled unless manifestly corrupt, arbitrary or misleading. *Media Graphics, Inc. v. Dir., Div. of Taxation*, 7 N.J. Tax 23 (Tax 1984), *aff'd*, 8 N.J. Tax 321 (N.J. Super. Ct. App. Div. 1996).

### **1-23 CERTIFICATE OF DEBT**

As an additional remedy for the collection of tax, the Director of the Division of Taxation may issue a certificate of debt to the Clerk of the Superior Court. The clerk then docketts the certificate as if it were a judgment, and the Director may proceed on the certificate as if it were a judgment [N.J.S.A. 54:49-12].

### **1-24 TAXPAYER ACTION FOR DAMAGES**

If an employee of the Division of Taxation knowingly disregards any tax law, administration provision or regulation in the collection of any tax, or knowingly, recklessly or negligently fails to release a lien against or bond on a taxpayer's property, then the taxpayer may, within two years from the date that the taxpayer could reasonably discover the actions of the employee or Director, bring an action for damages against the state in the Tax Court.

The damages must be limited to the actual direct economic damages suffered by the taxpayer as a proximate result of the actions of the employee or Director, plus costs, reduced by the amount of such damages and costs as could reasonably have been mitigated by the taxpayer. This civil action will be the exclusive remedy for recovering damages resulting from such actions [N.J.S.A. 54:51A-23].