

Social Impact

The rules proposed for readoption benefit SACT members, retirees, and survivors of members and retirees. Members, retirees, and survivors of members and retirees rely on the efficient operation of the SACT to provide them with monthly retirement benefits, with proper crediting of contributions and earnings, with death benefits, and with the information they need regarding their individual accounts. Members, retirees, and survivors of members and retirees rely upon the presence and predictability of the rules that guide the administration of their benefits and the stability of the SACT. The protections and guarantees that these rules afford members, retirees, and survivors of members and retirees mandate their continued existence. The taxpaying public is also affected by these rules, since public moneys are used to administer these benefits, and they too, benefit from the proper and efficient administration of the SACT.

Economic Impact

The rules proposed for readoption will not impose any adverse economic effects on the public; they will continue existing, long-standing, regulatory requirements. The rules proposed for readoption do not impose any additional recordkeeping or other requirements, and will serve to preserve the efficient administration and operation of the SACT. The current rules set forth in N.J.A.C. 17:8 have proven effective over time in the proper administration of the SACT. Without the rules at N.J.A.C. 17:8, the efficient operation of the SACT could not be ensured.

Participation in the SACT is an economic benefit to its members and a means of securing, through a voluntary investment program, retirement income separate from, and in addition to, the State-administered retirement systems. Contributions made by members are invested in the stock market.

SACT consists of two separate plans, the Regular Plan and the Tax Sheltered Plan (Internal Revenue Code Section 403(b)). Under the Regular Plan, contributions are taken from salary that has been subject to Federal income tax. When funds are withdrawn at retirement or separation, the contributions are not subject to Federal income tax, but the earnings on those contributions are taxable. Under the Tax Sheltered Plan, a salary reduction agreement is entered into with the employer, so that the salary the employer reports to the Internal Revenue Service is reduced by the amount of contributions. When the funds are withdrawn at retirement or separation, the contributions and earnings are subject to Federal taxation as ordinary income. The New Jersey Gross Income Tax and Social Security do not afford similar tax-sheltered benefits and those taxes must be paid on gross salary during participation in the SACT.

Only actively contributing members of one of the State-administered retirement systems are eligible to participate in the Regular Plan. Eligibility for the Tax-Sheltered Plan also requires membership in a State-administered retirement system and employment by a public educational institution. Elected officials are ineligible for the Tax-Sheltered Plan.

Federal Standards Statement

The rules proposed for readoption meet but do not exceed the applicable Federal standards, that is, 26 U.S.C. § 403(b). There are no other Federal standards applicable to the subject matter of these rules.

Jobs Impact

Implementation of the rules proposed for readoption will not result in the generation or loss of jobs. The Division invites any interested parties to submit any data or studies concerning the jobs impact of the rules proposed for readoption with their written comments.

Agriculture Industry Impact

The rules proposed for readoption will not have any impact on the agriculture industry.

Regulatory Flexibility Statement

The rules proposed for readoption only affect SACT members and retirees and survivors of SACT members and retirees. Thus, the rules proposed for readoption do not impose any reporting, recordkeeping, or other compliance requirements upon small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Therefore, a regulatory flexibility analysis is not required.

Housing Affordability Impact Analysis

The rules proposed for readoption will have no impact on affordable housing in New Jersey nor will they evoke a change in the average costs associated with housing because the rules pertain to administration of the SACT for members, retirees, and survivors of members and retirees.

Smart Growth Development Impact Analysis

The rules proposed for readoption will not have any impact on the achievement of smart growth nor will they evoke a change in housing production in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan because the rules pertain to administration of the SACT for members, retirees, and survivors of members and retirees.

Full text of the rules proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 17:8.

TREASURY — TAXATION

(a)

DIVISION OF TAXATION

Organization of the Division of Taxation

Proposed Readoption with Amendments: N.J.A.C.

18:1

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

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

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

Proposed Number: PRN 2014-009.

Submit comments by March 7, 2014, to:

Mitchell Smith
Administrative Practice Officer
Division of Taxation
P.O. Box 269
Trenton, NJ 08695-0269

The agency proposal follows:

Summary

Pursuant to N.J.S.A. 52:14B-5.1.c(2), the expiration date of N.J.A.C. 18:1 is extended 180 days to February 3, 2014. The Division has reviewed these rules and has determined them to be necessary, reasonable, and proper for the purposes for which they were originally promulgated.

The rules proposed for readoption contain two subchapters. Subchapter 1 contains information about the organization of the Division of Taxation. N.J.A.C. 18:1-1.1 provides certain information about the organization of the Division and directs the public to the Division's website for detailed information about the organizational structure of the Division. N.J.A.C. 18:1-1.1(b) is proposed to be amended to rephrase language regarding designation and allowing for any deputy director to serve as acting Director. N.J.A.C. 18:1-1.1(c), setting forth existing functional subunits under the Director is proposed for deletion and replacement with a statement that the Director may create subunits headed by a Deputy Director as the Director determines to be useful and efficient for the operation of the Division. N.J.A.C. 18:1-1.1(d) is proposed for amendment to replace assistant director with deputy director, to state that subunits beneath the deputy are headed by assistant directors, and to state that further subunits beneath the assistant directors are headed by branch chiefs.

N.J.A.C. 18:1-1.2 provides guidance for the public as to how to obtain general information regarding their rights and responsibilities, forms, and publications. N.J.A.C. 18:1-1.2(a) regarding obtaining general information is proposed for amendment to add that general information regarding taxpayers' rights and responsibilities under the tax laws of New Jersey, as well as tax forms, publications, and other general tax information is available on the Division's website. N.J.A.C. 18:1-1.2(b) is proposed for amendment to reorder language explaining that before or at

an interview with a taxpayer relating to the determination or collection of tax, the Division will provide the taxpayer with an explanation of the audit or collection process, to add a clarifying description, to delete a statutory citation, and to delete a sentence regarding access to Publication TBR-P, because the forms are available online. N.J.A.C. 18:1-1.2(c) is proposed for amendment to add that taxpayers may download forms and publications from the Division of Taxation's website, that a taxpayer may call the Automated Tax Information System at 609-826-4400 to request forms or publications, and that forms may be obtained by fax through NJTaxFax at 609-826-4500.

Subchapter 2 deals with procedures for petitioning the Division for rules. N.J.A.C. 18:1-2.1 provides that the procedures apply to all petitions made by interested persons for the adoption, amendment, or repeal of any existing rule by the Division of Taxation. N.J.A.C. 18:1-2.2 provides the required format for the petition. N.J.A.C. 18:1-2.3 states the procedures the Division will follow when it receives a petition for rulemaking. N.J.A.C. 18:1-2.4 provides that the Division will give 30 days notice prior to the adoption, amendment, or repeal of any rule, what that notice will consist of and how it will be publicized, how long the Division will extend the comment period, and what constitutes sufficient public notice to justify the extension. N.J.A.C. 18:1-2.5 provides that the Division will conduct a public hearing on a proposed rule at the request of a committee of the Legislature or a governmental agency or subdivision, or if sufficient public interest (as set forth in N.J.A.C. 18:1-2.5(b)) is shown.

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

Social Impact

The rules proposed for readoption with amendments describes the organization of the Division of Taxation and procedures for petitioning the Division to adopt a rule. The rules are proposed to be readopted pursuant to N.J.S.A. 52:14B-3(1), which provides: "In addition to other rule-making requirements imposed by law, each agency shall: (1) adopt as a rule a description of its organization, stating the general course and method of its operations and the methods whereby the public may obtain information or make submissions or requests..." The rules proposed for readoption with amendments will benefit the public by providing information as to how to contact the Division for information about taxpayer rights and for forms and publications issued by the Division, as well as information for how to petition for rulemaking.

Economic Impact

The rules proposed for readoption with amendments concerns organizational matters and therefore do not directly affect tax collections. The rules serve to protect State revenues by assisting taxpayers in complying with tax requirements and by providing information as to their rights and responsibilities and how to obtain tax forms and informational publications.

Federal Standards Statement

A Federal standards analysis is not required because the rules proposed for readoption with amendments do not exceed any Federal standards or requirements. There are no Federal standards or requirements applicable to the subject matter of the rules proposed for readoption with amendments.

Jobs Impact

The rules proposed for readoption with amendments will have no impact on jobs in New Jersey. The Division does not anticipate any increase or decrease in jobs as a result of the rules proposed for readoption with amendments.

Agriculture Industry Impact

The rules proposed for readoption with amendments will not have an impact on the agriculture industry.

Regulatory Flexibility Analysis

The rules proposed for readoption with amendments apply to all taxpayers, including small businesses as the term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The rules proposed for readoption with amendments do not impose reporting or recordkeeping requirements, nor any annual compliance costs on small

businesses. The only compliance requirements pertain to how an interested person may petition for rulemaking, which is the minimum necessary to properly process these petitions. The rules proposed for readoption describe the organization of the Division of Taxation and provide procedures applicable to petitions for rules. Professional services will not be required to comply with the rules. Taxpayers may wish to consult professional services to determine if any of the rules apply to their circumstances.

Housing Affordability Impact Analysis

The rules proposed for readoption with amendments would not result in a change in the average costs associated with housing and would not have any impact on affordable housing, because the rules proposed for readoption with amendments deal with the organization of the Division of Taxation and procedures for handling petitions for rulemaking.

Smart Growth Development Impact Analysis

The rules proposed for readoption with amendments would not result in a change in the housing production within Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan. This is because the rules proposed for readoption with amendments have nothing to do with housing production, either within Planning Areas 1 or 2, within designated centers, or anywhere in the State of New Jersey. The rules proposed for readoption with amendments deal with the organization of the Division of Taxation and procedures for handling petitions for rulemaking.

Full text of the rules proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 18:1.

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

SUBCHAPTER 1. ORGANIZATION OF THE DIVISION OF TAXATION

18:1-1.1 Organization of the Division of Taxation

(a) (No change.)

(b) [The] **Any** Deputy Director or [one or more] Assistant Director[s], designated by the Director by a certificate filed with the Secretary of State, **shall** serve[s] as Acting Director[(s)] during the Director's absence, disability, or [a] **as** otherwise provided for in N.J.S.A. 54:1-11.

[(c) The following functional subunits exist under the Director and are headed by Assistant Directors:

1. Audit;
2. Technical Services;
3. Compliance;
4. Property Administration; and
5. Systems and Technology Activity.]

(c) The Director may create subunits headed by a Deputy Director as the Director determines to be useful and efficient for the operation of the Division.

(d) Beneath the level of [Assistant] **Deputy** Director, subunits as required are headed by **Assistant Directors, and further subunits beneath the assistant directors are headed by** Branch Chiefs.

(e) (No change.)

18:1-1.2 Public information and submissions or request

(a) **General information regarding taxpayers' rights and responsibilities under the tax laws of New Jersey, as well as tax forms, publications, and other general tax information is available on the Division's website.** The public may **also** obtain general information regarding their rights and responsibilities under the tax laws of the State of New Jersey by writing to the New Jersey Division of Taxation **Technical** Information [and Publications] Branch, P.O. Box 281, Trenton, NJ 08695-0281. The public may [obtain specific information regarding their rights or responsibilities under one or more] **submit requests for technical advice or letter rulings regarding the application** of State tax laws by writing to the New Jersey Division of Taxation, Regulatory Services Branch, 50 Barrack Street, P.O. Box 269, Trenton, NJ 08695-0269.

(b) [The] **Before or at an interview with a taxpayer relating to the determination or collection of tax, the Division will provide the**

taxpayer with an explanation of the audit [and] or collection process[es], **whichever is appropriate**, and of the taxpayer's rights [pursuant to P.L. 1992, c. 175 before or at interviews with taxpayers relating to the determination or collection of tax. For this purpose, a taxpayer may request or receive Publication TBR-P from the Division].

(c) **Taxpayers may download forms and publications from the Division of Taxation's website, www.state.nj.us/treasury/taxation.** To request New Jersey tax forms or publications, a taxpayer may call the [Tax Hotline at 609-292-6400] **Automated Tax Information System at 609-826-4400** or 800-323-4400 (touch-tone only). **Forms may be obtained by fax through NJTaxFax at 609-826-4500.**

(a)

DIVISION OF TAXATION

Closing Agreements and Compromises

Proposed Readoption with Amendments: N.J.A.C. 18:33

Proposed Repeal and New Rule: N.J.A.C. 18:33-1.5

Proposed Repeals: N.J.A.C. 18:33-1.6 and 2.11

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

Authority: N.J.S.A. 54:50-1 and 54:53-1 et seq.

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

Proposal Number: PRN 2014-003.

Submit comments by March 7, 2014, to:

Mitchell C. Smith
Administrative Practice Officer
Regulatory Services Branch
Division of Taxation
PO Box 269
Trenton, NJ 08695-0269

The agency proposal follows:

Summary

Pursuant to N.J.S.A. 52:14B-5.1.c(2), N.J.A.C. 18:33 expires on April 25, 2014. The Division has reviewed the rules and has determined them to be necessary, reasonable, and proper for the purpose for which they were originally promulgated. The rules proposed for readoption with amendments, repeals, and new rules set forth policies and procedures related to closing agreements for tax liabilities and compromises of civil and criminal tax liabilities pursuant to N.J.S.A. 54:53-1 et seq.

Subchapter 1 provides rules for closing agreements. N.J.A.C. 18:33-1.1 provides general provisions related to the circumstances in which the Division may enter into a closing agreement. N.J.A.C. 18:33-1.2 provides examples of which items may be included in closing agreements for tax periods ending prior to the date of the agreement, and in closing agreements for tax periods ending after the date of the agreement. N.J.A.C. 18:33-1.3 explains the conditions under which closing agreements are final and conclusive, and the conditions under which that is not the case. N.J.A.C. 18:33-1.4 provides the procedures with respect to closing agreements. N.J.A.C. 18:33-1.5 outlines the issues that may be included in a closing agreement. Finally, N.J.A.C. 18:33-1.6 provides the procedures with respect to closing agreements.

Subchapter 2 provides rules on compromises. N.J.A.C. 18:33-2.1 provides the circumstances in which the Division may agree to a compromise of civil or criminal liabilities. N.J.A.C. 18:33-2.2 describes the scope of a compromise agreement. N.J.A.C. 18:33-2.3 provides the effect of a compromise agreement. N.J.A.C. 18:33-2.4 explains the procedure to make an offer in compromise. N.J.A.C. 18:33-2.5 provides that while an offer in compromise will not stay collection actions, the Director may defer collection if the State's interests are not jeopardized. N.J.A.C. 18:33-2.6 provides conditions for acceptance of an offer in compromise. N.J.A.C. 18:33-2.7 provides circumstances in which an offer in compromise may be withdrawn or rejected. N.J.A.C. 18:33-2.8 identifies certain information required from the Attorney General or his

or her designee to be placed on file if an offer in compromise is accepted. N.J.A.C. 18:33-2.9 requires that the taxpayer must waive the applicable statute of limitations on additional assessments in order for an offer in compromise to be accepted. N.J.A.C. 18:33-2.10 provides how a payment made under an offer of compromise will be allocated between tax, penalty, and interest. Finally, N.J.A.C. 18:33-2.11 requires the creation of a board within the Division with authority to execute compromise and closing agreements.

The existing rules are proposed for amendment, repeal, and/or replacement with new rules as follows:

Throughout the chapter, amendments are proposed for clarity, grammatical correctness, and to correct spelling errors.

Language stating that there may be a series of closing agreements for a taxpayer is relocated from N.J.A.C. 18:33-1.1(b) to new subsection (c), which is also amended to state that a closing agreement can involve multiple taxpayers.

The heading of N.J.A.C. 18:33-1.2 is amended to change "taxable periods" to "tax period." Subsection (a) is amended to relocate the examples of items affecting tax liability to new subsection (c), so that the examples are clearly applicable to both subsections (a) and (b).

The heading of N.J.A.C. 18:33-1.3 is amended to better reflect the intent of the section. Section (b) corrects two typographical errors.

Existing N.J.A.C. 18:33-1.5 and 1.6 are proposed for repeal as the rules are redundant with other rules in the chapter and/or are irrelevant.

New N.J.A.C. 18:33-1.5 specifies that a closing agreement applies only to the parties to the agreement and cannot be relied on by other taxpayers.

New N.J.A.C. 18:33-2.3(a)3 adds a significant change in the financial condition of a taxpayer that has entered into a compromise agreement as a reason to reopen a case, pursuant to N.J.S.A. 54:53-9.c.

N.J.A.C. 18:33-2.4(c) is proposed for amendment to delete reference to the Emergency Transportation Tax and the Transportation Benefits Tax that are no longer in existence.

The proposed amendment to N.J.A.C. 18:33-2.8 changes the heading of the section from "record" to "opinion of the Attorney General."

N.J.A.C. 18:33-2.11 is proposed for repeal because the Division has never maintained such a board and does not anticipate doing so in the future.

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 readoption with amendments, repeals, and new rules will continue to have a positive social impact by notifying taxpayers of procedures for obtaining a closing agreement with respect to their tax liabilities or a compromise of civil or criminal liabilities for which they may be liable.

The Division is authorized by N.J.S.A. 54:53-1 to enter into closing agreements with any person for any State tax. Under N.J.S.A. 54:53-1, the Division may enter into a closing agreement in "any case in which there appears to be an advantage in having the case permanently and conclusively closed, or if good and sufficient reasons are shown by the taxpayer for desiring a closing agreement and it is determined by the director that the State will sustain no disadvantage through consummation of such an agreement." This provision provides an opportunity for taxpayers to reduce their tax liabilities under certain circumstances.

The Division is also authorized, under N.J.S.A. 54:53-6, to compromise criminal and civil liabilities before a case is referred to the Attorney General. N.J.S.A. 54:53-7 allows for the compromise of criminal and civil liabilities where there is "(1) doubt as to liability or (2) doubt as to collectability." This provision, with the rules proposed for readoption with amendments, eases the burden on eligible taxpayers that have criminal or civil liabilities by allowing the Division to enter into installment agreements with those taxpayers for the payment of the outstanding liabilities. Under N.J.S.A. 54:53-7.b, an installment agreement is permitted where "the equities of the taxpayer's liability indicate that a compromise would be in the interest of the State and that without such a compromise the taxpayer would experience extreme financial hardship." By explaining the procedures to apply for a