

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 re-adoption 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 re-adoption 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 re-adoption 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

compromise of tax liabilities, the rules proposed for readoption with amendments, repeals, and new rules will give effect to the statutory mandate to alleviate the burden of tax liabilities on taxpayers in cases of extreme financial hardship.

Economic Impact

The rules proposed for readoption with amendments, repeals, and new rules serve to improve the administration and enforcement of State tax laws by establishing procedures that must be followed with respect to closing agreements and offers in compromise. Additionally, by establishing procedures for these options for settling controversies regarding tax liabilities, the rules help to reduce costs of tax administration which may otherwise require collection efforts or long, time-consuming protests, or protracted court cases.

Federal Standards Statement

A Federal standards analysis is not required because the rulemaking authority is pursuant to N.J.S.A. 54:50-1 et seq., and is not subject to any Federal requirements or standards.

Jobs Impact

The rules proposed for readoption with amendments, repeals, and new rules are not expected to result in the generation or loss of jobs in the State.

Agriculture Industry Impact

The rules proposed for readoption with amendments, repeals, and new rules will have no impact on the agriculture industry.

Regulatory Flexibility Analysis

The rules proposed for readoption with amendments, repeals, and new rules contain tax procedures affecting all taxpayers that have outstanding tax liabilities or civil or criminal penalties, including "small businesses" as the term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The statutory provisions on which the rules are based, N.J.S.A. 54:53-1 et seq., make no distinction between small businesses and other taxpayers, since to do so would not be in compliance with the applicable statutes. The rules proposed for readoption with amendments, repeals, and new rules do impose any reporting or recordkeeping requirements and any compliance requirements on small businesses, but those requirements are minimal and only apply if the small business or other taxpayer chooses to file such a request. The Division has minimized the impact of any potential burden by having standard forms that must be completed and submitted to request to enter into a closing agreement or a compromise. Small businesses and other taxpayers may wish to consult with accountants or legal professionals in order to review the rules proposed for readoption with amendments to determine the relevance of the rules to their own tax situation.

Housing Affordability Impact Analysis

The rules proposed for readoption with amendments, repeals, and new rules would not result in a change in the average costs associated with housing and would not have any impact on affordable housing as the rules pertain to closing agreements and compromises of tax liabilities.

Smart Growth Development Impact Analysis

The rules proposed for readoption with amendments, repeals, and new rules will have no impact on smart growth and would not result in a change in the housing production within the Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan. The basis for this finding is that the proposed regulation has nothing to do with housing production, either within Planning Areas 1 or 2, within designated centers, or anywhere in the State of New Jersey, as the rules pertain to closing agreements and compromises of tax liabilities.

Full text of the rules proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 18:33.

Full text of the rules proposed for repeal may be found in the New Jersey Administrative Code at N.J.A.C. 18:33-1.5, 1.6, and 2.11.

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

SUBCHAPTER 1. CLOSING AGREEMENTS

18:33-1.1 General provisions

(a) The Director of the Division of Taxation or any of his **or her** delegated representatives may enter into a written agreement with any person relating to the liability of such person (or of the person or estate for whom he **or she** acts) in respect to any State tax administered by the [Director of the] Division of Taxation for any [taxable] tax period. [ending prior or subsequent to the date of such agreement. A] **The Director, or his or her authorized designee, may approve a closing agreement [may be entered into] on behalf of the Division** 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] **Director** that the State of New Jersey will sustain no disadvantage through consummation of such an agreement.

(b) A closing agreement may be executed even [through] **though**, under the **terms of the agreement**, the taxpayer is not liable for any tax for the period [to which] **included in the agreement** [relates].

(c) There may be a series of closing agreements relating to the **taxpayer's tax liability for a single period. A closing agreement can also include multiple taxpayers.**

18:33-1.2 [Taxable] Tax periods

(a) [Closing] **A closing agreement[s with respect to taxable] that includes tax periods [ended] ending** prior to the date of the agreement may relate to the total tax liability of the taxpayer or to [any] **one** or more separate items affecting the tax liability of the taxpayer[, as, for example, the amount of gross receipt, deduction items, other income items, statutory deductions or exclusions, statutory additions to income, the year in which an item of income is to be included in gross receipts or income, the year in which an item is to be deducted, or the value of property on a specific date].

(b) [Closing] **A closing agreement[s with respect to taxable] that includes tax periods ending [subsequent to] after** the date of the agreement may relate to one or more separate items affecting the tax liability of the taxpayer.

(c) **Separate items affecting the tax liability of the taxpayer include, but are not limited to, the following: the amount of gross receipts, deduction items, other income items, statutory deductions or exclusions, statutory additions to income, the year in which an item of income is to be included in gross receipts or income, the year in which an item is to be deducted from income, or the value of property on a specific date.**

18:33-1.3 Finality[; determination of fraud] of closing agreements

(a) A **fully executed** closing agreement[, which is approved within such time as may be stated in such agreement, or later agreed to, shall be] **is final and conclusive for the period stated in the agreement**, [and, expect upon a showing of] **unless the Division discovers fraud, [or] malfeasance, or misrepresentation of a material fact by the taxpayer.**

1. (No change.)

2. In any suit, action, or proceeding, such agreement, or any determination, assessment, collection, payment, abatement, refund, or credit made in accordance therewith, shall not be annulled, modified, set aside, or disregarded. However, a closing agreement with respect to a [taxable] tax period ending subsequent to the date of the agreement is subject to any change in, or modification of, the law enacted subsequent to the date of the agreement [and made applicable to such taxable period, and each closing agreement so recited] **if the change or modification is applicable to that tax period.**

(b) Execution and approval of a closing agreement does not preclude an additional inspection of a taxpayer's records to determine whether fraud, malfeasance, or misrepresentation of material fact exists as to execution of **the** agreement.

18:33-1.4 Procedures with respect to closing agreements

(a) A request for a closing agreement, which relates to a prior [taxable] tax period [may be submitted at any time before a case] **cannot be approved if the taxpayer has a complaint pending in the New Jersey Tax Court** with respect to the [tax liability involved is filed in the New

Jersey Tax Court] **subject of the requested agreement.** All closing agreements [shall] **must** be [executed on] **submitted in a form[s]** prescribed by the Director [of the Division of Taxation].

(b) Any tax [or] deficiency [in tax determined pursuant to] **or overpayment due under the terms of a closing agreement [shall] must** be assessed and collected[, and any overpayment determined pursuant thereto shall be] **or credited or refunded, respectively,** in accordance with the applicable provisions of law, **unless otherwise agreed to by the parties.**

18:33-1.5 Applicability

A closing agreement applies only to the parties to the agreement and cannot be relied on by any other taxpayers or their representatives.

SUBCHAPTER 2. COMPROMISES

18:33-2.3 Effect of compromise agreement

(a) A compromise agreement relates to the entire liability of the taxpayer (including taxes, ad valorem penalties, and interest) with respect to which the offer in compromise is submitted and all questions of such liability are conclusively settled thereby. Specific penalties, however, shall be compromised separately and not in connection with taxes, interest, or ad valorem penalties. Neither the taxpayer nor the State shall, upon acceptance of an offer in compromise, be permitted to reopen the case except by reason of the following:

1. Falsification or concealment of assets by the taxpayer; [or]
2. Mutual mistake of a material fact sufficient to cause a contract to be reformed or set aside[.]; **or**

3. The significant change in the financial condition of a taxpayer with which the Director has entered into a compromise agreement.

(b) However, acceptance of an offer in compromise of a civil liability does not [remit] **alter or affect** a criminal liability, nor does acceptance of an offer in compromise of a criminal liability [remit] **alter or affect** a civil liability.

18:33-2.4 Procedure with respect to offers in compromise

(a) Offers in compromise shall be submitted [on] **in a form[s]** prescribed by the Director [of the Division of Taxation which may be obtained from the Division of Taxation and]. **The offer** should generally be accompanied by a remittance representing the amount of the compromise offer, or a deposit if the offer provides for future installment payments. Remittance shall be in the form of a certified, cashier's, or treasurer's check drawn on any bank or trust company incorporated under the laws of the United States or any state, territory, or possession of the United States, or by a United States postal, bank, express, or telegraph money order. If the final payment on an accepted offer is contingent upon the immediate or simultaneous release of a tax lien in whole or in part, such payment must be in cash, or in the manner as provided [above] **in this subsection.**

(b) (No change.)

(c) Compromises regarding trust fund [statutes] **taxes,** such as the Sales and Use Tax, [the Emergency Transportation Tax, and the Transportation Benefits Tax,] shall have annexed to the offer of compromise personal affidavits and personal income and net worth statements of the officers **or employees** responsible for the collection of any such taxes for the same periods as required from the taxpayer.

18:33-2.8 [Record] **Opinion of the Attorney General**

(a) (No change.)

18:33-2.10 Allocation of tax, penalty, and interest

Allocation of tax, penalty, and interest in case of payments made pursuant to offers accepted in compromise of taxes will be made as specified in the agreement. If no allocation is specified in the offer or agreement, or if no agreement has been accepted and the amount of [accepted] **the offer exceeds combined tax and penalties,** payments received (whether installment or lump sum) will be applied to tax, penalty, and interest in that order, beginning with **the earliest [year] period.**

OTHER AGENCIES

(a)

NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY

Administrative Rules; Fees Authority Assistance Programs; Economic Redevelopment and Growth Program; Urban Transit Hub Tax Credit Program; Business Employment Incentive Program; Business Retention and Relocation Assistance Grant Program; Tax Credit Certificate Transfer Program; and Grow New Jersey Assistance Program

Proposed Amendments: N.J.A.C. 19:30-6.1, 6.2, 6.3, and 6.4; and 19:31-4, 9.6, 10.12, 14.2, 14.14, 15.7, and 18

Proposed New Rules: N.J.A.C. 19:31-4.5, 4.9, 4.13, 18.17, and 18.18

Authorized By: New Jersey Economic Development Authority, Michele Brown, Chief Executive Officer.

Authority: P.L. 2013, c. 161.

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

Proposal Number: PRN 2014-007.

Submit written comments by March 7, 2014, to:

Maureen Hassett, SVP Finance and Development
New Jersey Economic Development Authority
PO Box 990
Trenton, NJ 08625-0990

The agency proposal follows:

Summary

The New Jersey Economic Development Authority (“EDA” or “Authority”) is proposing amendments to the rules implementing the Economic Redevelopment and Growth (ERG) Program and Grow New Jersey Assistance (Grow NJ) Program based on statutory revisions enacted pursuant to the New Jersey Economic Opportunity Act of 2013, P.L. 2013, c. 161, intended to enhance business attraction, retention, and job creation efforts and strengthen New Jersey’s competitive edge in the global economy.

Specifically, P.L. 2013, c. 161 merges the State’s five economic development incentive programs, while expanding the geographic boundaries and lowering eligibility thresholds for the ERG and Grow NJ programs to further the ability of the State to attract and retain businesses; and phases out the Business Employment Incentive Program (BEIP) and Business Retention and Relocation Assistance Grant (BRRAG) Program by December 31, 2013, and the Urban Transit Hub Tax Credit (UTHTC) Program by January 16, 2014.

In addition to implementing the statutory revisions, the proposed amendments address fees under the ERG Program and Grow NJ Program commensurate with the increased level of assistance, and eligibility review and compliance monitoring required pursuant to P.L. 2013, c. 161; and establish and revise certain fees under the Brownfields and Contaminated Site Remediation Program, UTHTC Program, BEIP, BRRAG Program, and BRRAG Tax Credit Certificate Transfer Program, for the costs in administering awards that may extend for up to 15 years following approval by EDA.

The proposed amendments and new rules are summarized as follows:

Subchapter 6. Fees

N.J.A.C. 19:30-6.1 through 6.4 Application Fee; Commitment Fees; Closing Fees; and Post-Closing Fees

The proposed amendments delete existing fees for the Economic Redevelopment and Growth (ERG) Program, set forth at N.J.A.C. 19:30-6.1 through 6.4, which are relocated and revised at proposed new