

(d) If the Department determines that the participating facility's failure to meet all requirements would result in an immediate health or safety hazard, the Department may cover the TODS sign panel upon notice to the participating facility.

(e) Where a participating facility ceases to satisfy any requirements due to a change in the policies, guidance, rules or regulations of the Department, Federal Highway Administration or MUTCD, the TODS signs shall be maintained until the end of the contract term.

16:41D-7.2 Appeals

(a) An applicant may appeal the denial of its application to the program or a determination that it does not satisfy the requirements of this chapter. Appeals shall be submitted by letter to the Manager of the TODS program at:

New Jersey Department of Transportation
Office of Outdoor Advertising and Wireless Services
TODS & LOGO PROGRAM
P.O. Box 600
Trenton, NJ 08625

1. The letter shall include a statement describing the nature of the appeal and the facts on which the appeal is based. The letter must be received within 30 days of the date of denial or determination.

(b) Within 15 days of the receipt of an appeal letter, the Manager of the TODS program will schedule an informal meeting to resolve the dispute. A written decision will be issued within 30 days of the meeting. If the dispute is not fully resolved, the applicant may appeal by submitting a letter to the Director of the Division of Right of Way (Director) within 30 days at:

Director, Division of Right of Way
New Jersey Department of Transportation
P.O. Box 600
Trenton, NJ 08625

(c) The Director will schedule a hearing within 15 days of receipt of the written request. The Director may conduct the hearing or designate a hearing officer. If a hearing officer conducts the hearing, he or she will make written recommendations to the Director and provide any other information requested by the Director. At the hearing, the person requesting the appeal will be accorded an opportunity to present information regarding the denial or determination. The Director's decision will be based on the information presented at the hearing, any recommendation of the hearing officer, the purposes and criteria set forth in this chapter and the MUTCD. The written decision will be issued within 30 days of the hearing and shall be sent to the person who requested the appeal. The Director's decision is the Department's final agency decision.

SUBCHAPTER 8. TERMINATION OF PROGRAM

16:41D-8.1 Termination

The Department may, in its sole discretion, terminate the program for its convenience or necessity. If the Department terminates the program, it will reimburse the annual fees paid by the participating facilities after pro-ration on a monthly basis.

APPENDIX

The following State highway routes have been designated for Tourist Oriented Directional Signs (TODS), as determined by the Department's Bureau of Traffic Engineering and Safety, based on traffic volumes, speed, location and sound engineering judgment:

9	28	38	50	71	109	179
9w	29	40	52	72	124	181
10	30	41	53	73	130	182
12	31	44	54	77	138	183
15	33	45	56	79	147	202
17	34	46	57	82	152	206
22	35	47	66	83	166	208
23	36	48	68	88	168	284
27	37	49	70	94	173	322

TREASURY — TAXATION

(a)

DIVISION OF TAXATION

General Policies and Procedures

Refund Claim Procedures

Reproposed Amendment: N.J.A.C. 18:2-5.8

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

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

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

Proposal Number: PRN 2011-063.

Submit comments in writing by May 6, 2011 to:

Mitchell C. Smith, Administrative Practice Officer
Regulatory Services Branch
Division of Taxation
50 Barrack Street
P.O. Box 269
Trenton, NJ 08695-0269

The agency reproposal follows:

Summary

The Division originally proposed amendments to N.J.A.C. 18:2-5.8, General Policies and Procedures, Refund Claim Procedures, on January 4, 2010 at 42 N.J.R. 56(a). The amendments were intended to clarify procedures that taxpayers must follow in order to receive a refund of any overpayment of tax.

A number of comments were received in response to the notice of proposal and several changes have been made in this notice of reproposal to address those comments. Public comments to the original notice of proposal were received from the following:

1. Robert Schachter, Chair, New Jersey Society of CPAs;
2. Michael A. Guariglia, Partner, McCarter & English; and
3. Mitchell A. Newmark, Morrison Foerster, on behalf of Ryan, Inc.

1. COMMENT: The Division should define "sufficient documentation" for a refund claim to be deemed valid for statute of limitation and interest purposes. The proposed amendments would give the Division the authority to deem refund claims to have not been filed, without consideration of the information provided with the claim.

RESPONSE: The Division believes that the existing rule provided notice of the documentation required for a refund claim to be deemed valid. However, the Division has addressed this concern in the repropounded amendments by eliminating the requirement that the Division must deem a refund claim to be valid for purposes of the statute of limitations. Under the repropounded amendments, if the claimant does not file sufficient documentation, the Division will provide guidance on required documentation.

2. COMMENT: There is no statutory authority that disallows taxpayers from filing protective claims for refund. It has been common practice for the Division to allow protective claims for refund in order for taxpayers to protect their rights on undecided and litigated issues.

RESPONSE: Without conceding the commenter's argument regarding protective claims for refunds, the Division has not repropounded new subsection (h) from the original notice of proposal stating that protective claims for refunds are not permitted. The Division believes that the policy on protective claims for refunds requires further study and should be addressed in a separate notice of proposal.

3. COMMENT: The New Jersey Tax Court recognized protective claims for refunds in *Estate of Ehringer v. Director, Div. of Taxation*, 24 N.J.Tax 599 (Tax 2009). The proposed policy of disallowing protective refund claims will deprive taxpayers of their procedural and due process rights and result in unnecessary expense for taxpayers and the State.

RESPONSE: The case of *Estate of Ehringer v. Director, Div. of Taxation*, 24 N.J.Tax 599 (Tax 2009) required the Division to allow protective refund claims for transfer inheritance and estate tax. The Division interprets the holding of that case to apply only to the transfer

inheritance and estate tax, and has adopted rules at N.J.A.C. 18:26-3A.12 and 10.12 that allow protective refund claims for those taxes. As noted in the Response to Comment 2, above, however, and without conceding the commenter's argument regarding protective claims for refunds, the Division has not repropounded subsection (h) from the original notice of proposal stating that protective claims for refunds are not permitted. The Division believes that the policy on protective claims for refunds requires further study and should be addressed in a separate notice of proposal.

4. COMMENT: The proposed Example 2, indicating that a taxpayer filing a refund claim of sales tax must include copies of each invoice, is unnecessary for the Division to perform an audit.

RESPONSE: The requirement that claimants of sales tax refunds file invoices or other proof for all transactions for which a refund is claimed is already included in the existing regulation at N.J.A.C. 18:2-5.8(d)3, which same regulation also allows for requests for alternative proof of payment. However, the Division proposes to delete the originally proposed Example 2 in the repropounded amendments because it does not correctly state the Division's current interpretation of the statute of limitations.

5. COMMENT: One commenter argued that the proposed amendments exceeded the Director's authority under N.J.S.A. 54:50-1 and 54:49-14(a), and that the proposed amendments strip taxpayers of substantive rights by going beyond matters of form by dictating that a refund is not filed until the taxpayer has all but proven the claim. The commenter also argued that the proposed amendments did not safeguard taxpayers' rights to due process by barring the filing of a refund claim without prior notice of defects in the submission of the claim. The commenter included a detailed analysis of the concepts of substantive rights and due process.

RESPONSE: The Division agrees that the proposed amendments exceeded the Director's authority under N.J.S.A. 54:50-1 and 54:49-14(a). Therefore, the requirement in the original notice of proposal that a refund claim provide sufficient documentation in order to be deemed "filed" has been deleted from the notice of repropounded amendment. Further, the requirement that a claim provide sufficient documentation in order to be deemed "complete" is proposed to be deleted from the existing rule for the same reason. The statement in the rule that the Division will provide guidance to taxpayers, which was deleted from the existing rule in the proposed amendments, is reinserted into the rule with the repropounded amendments.

6. COMMENT: The proposed amendment barring protective refund claims is in conflict with a body of cases affirming a judicially recognized right to submit such claims, including *Estate of Ehringer v. Director, Div. of Taxation*, 24 N.J.Tax 599 (Tax 2009), *International Thomson Business Information, Inc. v. Director, Div. of Taxation* 14 N.J.Tax 424 (Tax 1995), *Futurevision Cable Enterprises, Inc. v. Taxation Div. Director*, 6 N.J.Tax 149, (Tax 1983), *Tuition Plan of New Hampshire v. Director, Div. of Taxation*, 4 N.J.Tax 470 (Tax 1982) and *CIT Fin. Services Consumer Disc.Co. v. Director, Div. of Taxation*, 4 N.J.Tax 568 (Tax 1982).

RESPONSE: As noted above, the Division interprets the holding of *Estate of Ehringer* to apply only to the transfer inheritance and estate tax, and has adopted rules at N.J.A.C. 18:26-3A.12 and 10.12 that allows protective refund claims for those taxes. However, as noted in the Response to Comment 2 above, and without conceding the commenter's argument regarding protective claims for refunds, the Division has not repropounded subsection (h) from the original notice of proposal stating that protective claims for refunds are not permitted. The Division believes that the policy on protective claims for refunds requires further study and should be addressed in a separate notice of proposal.

The following is a summary of the amendments that the Division is repropounding at this time.

N.J.A.C. 18:2-5.8(g) is repropounded for amendment to replace the word "maybe" with the words "may" and "be" to correct a grammatical error. Subsection (g) is further repropounded for amendment to delete the following language: "For purposes of the statute of limitations for filing claims for refunds under N.J.S.A. 54:49-14 and 54A:9-8, or the statute of limitations for the computation of interest payments on late refunds that are not paid within six months from 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, pursuant to N.J.S.A. 54:49-15.1, the

refund claim will not be deemed complete until the required information is submitted. A claim which does not comply with the applicable requirements of this section shall not be considered for any purpose as a claim for refund or credit. (See also N.J.A.C. 18:2-5.9, Interest on overpayments.)"

Subsection (g) is repropounded to state that a refund claim must include documentation sufficient to establish an overpayment that entitles the taxpayer to a refund. If a refund claim does not contain sufficient information, the Division will provide the taxpayer with guidance on the information required to demonstrate an overpayment. If the taxpayer does not respond to the Division's request for documentation within 30 days of receipt of such guidance, the Division will deny the claim. The taxpayer may refile the claim, with documentation to substantiate the claim, within the applicable statute of limitations for filing refund claims, or file an appeal of the denial of the claim with the Conference and Appeals Branch within 90 days pursuant to N.J.S.A. 54:49-18, or alternatively, file a direct appeal to the Tax Court of New Jersey within 90 days pursuant to N.J.S.A. 54:32B-21 and R.8:4-1. The Examples that were added to subsection (g) in the original proposal are not being repropounded because the Examples did not correctly state the Division's current policy regarding the statute of limitations.

The original notice of proposal added new N.J.A.C. 18:2-5.8(h) stating that protective claims for refunds are not permitted, and the cross-reference to N.J.A.C. 18:26-3A.12 and 10.12, providing special procedures for protective claims for refunds of Transfer Inheritance and Estate Tax, and is not included in this notice of repropounded. The Division believes that the policy on protective claims for refunds requires further study and should be addressed in a separate notice of proposal.

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

Social Impact

The repropounded amendments will have a beneficial social impact by clarifying procedures that taxpayers must follow in order to receive a refund of any overpayment of tax. N.J.S.A. 54:50-1 gives the Director of the Division of Taxation the authority to "make and enforce such rules and regulations as he may deem necessary" to "carry into effect the provisions of this subtitle [the State Uniform Tax Procedure Law]." N.J.S.A. 54:49-14 provides that "Any taxpayer, at any time within four years from the payment of any original or addition tax assessed against him, unless a shorter limit is fixed by the law imposing the tax, may file under oath with the director a claim for refund, in such form as the director may prescribe, stating the grounds therefore,...." This statutory provision gives the Director the authority to determine the format that taxpayers must follow in order to file a valid refund claim.

Economic Impact

The repropounded amendments will help to protect State revenues by allowing for the denial of claims for refunds of taxes that are not properly substantiated. By clarifying the Division's procedures for handling refund claims, the repropounded amendments may encourage compliance with the procedures by taxpayers, so that refund claims can be resolved within six months from the filing of the claim, thus avoiding the need for the Division to pay interest on refunds paid six months from the filing of the claim, as required by N.J.S.A. 54:49-15.1. The existing rule and repropounded amendments require taxpayers to file documentation to substantiate their refund claim, and there may often be costs associated with compiling the required documentation. However, the repropounded amendments are intended to protect the interests of taxpayers with legitimate refund claims by providing guidance to taxpayers on the information required to substantiate refund claims, allowing taxpayers to file their claims correctly and avoid delays in the processing of their refunds.

Federal Standards Statement

A Federal standards analysis is not required because the repropounded amendments do not involve any Federal standards or requirements. The repropounded amendments are a matter of New Jersey law and policy.

Jobs Impact

The Division does not anticipate that any jobs will be created or lost as a result of the repropoed amendments.

Agriculture Industry Impact

The repropoed amendments are not expected to have an impact on the agriculture industry.

Regulatory Flexibility Analysis

The repropoed amendment, N.J.A.C. 18:2-5.8, deals with tax refund claim procedures, and applies to all taxpayers who file refund claims, including small businesses as the term is defined in the Regulatory Flexibility Act., N.J.S.A. 52:14B-16 et seq. The repropoed amendments, therefore, also apply to all taxpayers with refund claims including small businesses. There is no basis in the applicable statute, N.J.S.A. 54:48-1 et seq., the State Uniform Tax Procedure Law, to distinguish between small businesses and other taxpayers in the application of tax refund claim procedures. The repropoed amendments do not impose additional reporting, compliance or recordkeeping requirements, but the amendments clarify existing information submission requirements that are stated in the current rule. Taxpayers, including small businesses, are not required to utilize professional services to comply with the rule or the repropoed amendments, but they may wish to obtain professional advice depending on the complexity of their tax situation and potential entitlement to a refund of an overpayment of tax.

Smart Growth Impact

The repropoed amendments will have no impact on the achievement of smart growth and the implementation of the State Development and Redevelopment Plan.

Housing Affordability Impact

The repropoed amendments would not result in a change in the average costs associated with housing. The repropoed amendments have no impact on any aspect of housing because they involve claims for refunds of taxes.

Smart Growth Development Impact

The repropoed 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. The basis for this finding is that the repropoed 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 repropoed amendments involve claims for refunds of taxes.

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

SUBCHAPTER 5. REFUNDS

18:2-5.8 Refund claim procedures

(a)-(f) (No change.)

(g) The refund claim shall set forth the taxpayer's name, address, identifying number, signature[,] and a full narrative description of the claim. The narrative description shall set forth in detail each ground upon which a credit or refund is claimed and facts sufficient to apprise the Division of the exact basis thereof. Citations to relevant statutes, regulations[,] and case law are not required but [maybe] **may be** included if known. The statement of the grounds and facts shall be verified by a written declaration that it is made under the penalties of perjury. **A refund claim must include documentation sufficient to establish an overpayment that entitles the taxpayer to a refund.** If a refund claim does not contain sufficient information, the Division will [return the claim with guidance to] **provide** the taxpayer[. For purposes of the statute of limitations for filing claims for refunds under N.J.S.A. 54:49-14 and 54A:9-8, or the statute of limitations for the computation of interest payments on late refunds that are not paid within six months from 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, pursuant to N.J.S.A. 54:49-15.1, the refund claim will not be deemed complete until the required information is submitted. A claim which does not comply with the applicable requirements of this section shall not be considered

for any purpose as a claim for refund or credit. (See also N.J.A.C. 18:2-5.9, Interest on overpayments).] **with guidance on the information required to demonstrate an overpayment. If the taxpayer does not respond to the Division's request for documentation within 30 days of receipt of such guidance, the Division will deny the claim. The taxpayer may refile the claim, with documentation to substantiate the claim, within the applicable statute of limitations for filing refund claims, or file an appeal of the denial of the claim with the Conference and Appeals Branch within 90 days pursuant to N.J.S.A. 54:49-18. Alternatively, the taxpayer may file a direct appeal to the Tax Court of New Jersey within 90 days pursuant to N.J.S.A. 54:32B-21 and R.8:4-1.**

OTHER AGENCIES

(a)

NEW JERSEY MEADOWLANDS COMMISSION

District Zoning Regulations

Official Zoning Map

Block 108.04, Lot 4, in the Borough of East Rutherford

Proposed Amendment: N.J.A.C. 19:4-3.3

Authorized By: New Jersey Meadowlands Commission, Marcia Karrow, Executive Director.

Authority: N.J.S.A. 13:17-1 et seq., specifically 13:17-6(i). See also N.J.A.C. 19:3-1.5.

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

Proposal Number: PRN 2011-064.

A **public hearing** on this matter will be held on Tuesday, April 12, 2011, at 10:00 A.M. at the following location:

New Jersey Meadowlands Commission
One DeKorte Park Plaza
Lyndhurst, New Jersey 07071

Submit written comments by May 6, 2011 to:

Sara J. Sundell, P.E., P.P.
Director of Land Use Management
New Jersey Meadowlands Commission
One DeKorte Park Plaza
Lyndhurst, New Jersey 07071

It is requested (but not required) that anyone submitting written comments also include a disc containing a digital version, preferably in Microsoft Word. Interested persons may obtain a copy of this proposal from the New Jersey Meadowlands Commission (NJMC) website, www.njmeadowlands.gov. The proposal may also be inspected during normal office hours at the NJMC, One DeKorte Park Plaza, Lyndhurst, New Jersey 07071.

The agency proposal follows:

Summary

On July 27, 2010, a petition for rezoning was received by the New Jersey Meadowlands Commission (NJMC) from the property owner, Eastbound, Inc., regarding the property identified as Block 108.04, Lot 4, located within the Hackensack Meadowlands District (HMD), in the Borough of East Rutherford. The subject property is currently designated Environmental Conservation on the Hackensack Meadowlands District Official Zoning Map. The petition requests that the NJMC rezone Block 108.04, Lot 4, from its existing zoning of Environmental Conservation (EC) to Planned Residential (PR). The subject property is located along the Route 3 East South Service Road.

The subject property is an irregularly-shaped, unimproved parcel comprising approximately 3.88 acres. The northerly portion of the subject property consists of approximately 1.97 acres of relatively flat uplands. Approximately 1.91 acres of wetlands are located in the southern portion of the site. The petitioner has provided a Jurisdictional Determination,