

Housing Affordability Impact Analysis

The proposed amendments will not have any impact on the affordability of housing in New Jersey and there is an extreme unlikelihood that the proposed amendments would evoke a change in the average costs associated with housing because the rules concern the regulation of firearms.

Smart Growth Development Impact Analysis

The proposed amendments will have an insignificant impact upon smart growth and there is an extreme unlikelihood that the proposed amendments would 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 concern the regulation of firearms.

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

SUBCHAPTER 1. FIREARMS PURCHASER IDENTIFICATION
CARD AND PERMIT TO PURCHASE A
HANDGUN

13:54-1.2 Definitions

The words and terms used in this chapter shall have the following meanings:

...

“Assault firearms” means:

1.-3. (No change.)

4. A semi-automatic rifle with a fixed magazine capacity exceeding 15 rounds; [or]

5. A part or combination of parts designed or intended to convert a firearm into an assault firearm[,] or any combination of parts from which an assault firearm may be readily assembled if those parts are in the possession or under the control of the same person[.]; or

6. A firearm with a bump stock attached.

...

“**Bump stock**” means any device or instrument for a firearm that increases the rate of fire achievable with the firearm by using energy from the recoil of the firearm to generate a reciprocating action that facilitates repeated activation of the trigger.

...

“Machine gun” means any firearm, mechanism, or instrument not requiring that the trigger be pressed for each shot and having a reservoir, belt, or other means of storing and carrying ammunition [which] **that** can be loaded into the firearm, mechanism, or instrument and fired therefrom. **A machine gun shall also include, without limitation, any firearm with a trigger crank attached.**

...

“**Trigger crank**” means any device or instrument to be attached to a firearm that repeatedly activates the trigger of the firearm through the use of a lever or other part that is turned in a circular motion; provided, however, the term shall not include any weapon initially designed and manufactured to fire through the use of a crank or lever.

...

13:54-1.3 State of New Jersey firearms identification card or permit to purchase a handgun and form of register required; prohibition on sale of certain weapons

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

(c) The provisions of (a) and (b) above shall not apply to the Armed Forces of the United States, the National Guard, or to a law enforcement agency; provided that such transactions are authorized in writing by the appropriate governmental entity as provided by this chapter.

1.-3. (No change.)

4. If an agency wishes to utilize firearms that are considered abandoned property, all procedures pursuant to the Abandoned Property Act, N.J.S.A. 40A:14-157, must be followed in addition to ensuring that proper notifications are made to the prosecutor’s office, Attorney General’s Office, and the Superintendent, as set forth above. New Jersey law enforcement agencies [can only] **may purchase firearms for use by law enforcement officers in the actual performance of the officers’**

official duties, which purchase may be made directly from a manufacturer or through a licensed retail firearms dealer[s] located in New Jersey or any other state. Individuals donating firearms to New Jersey law enforcement agencies must ensure that all such transfers are conducted through licensed dealers pursuant to all regulatory provisions, State statutes, and all necessary local ordinances.

(d) (No change.)

SUBCHAPTER 2. HANDGUNS

13:54-2.4 Application for a permit to carry a handgun

(a)-(c) (No change.)

(d) Each application form shall also be accompanied by a written certification of justifiable need to carry a handgun, which shall be under oath and which:

1. In the case of a private citizen, shall specify in detail the urgent necessity for self-protection, as evidenced by [serious threats,] specific threats[,] or previous attacks, which demonstrate a special danger to the applicant’s life that cannot be avoided by [reasonable] means other than by issuance of a permit to carry a handgun. Where possible, the applicant shall corroborate the existence of any specific threats or previous attacks by reference to reports of such incidents to the appropriate law enforcement agencies; or

2. (No change.)

(e)-(f) (No change.)

TREASURY—TAXATION

(a)

DIVISION OF TAXATION**Luxury Tax****Proposed Readoption with Amendments: N.J.A.C. 18:25****Proposed Repeal: N.J.A.C. 18:25-1.3**

Authorized By: John Ficara, Acting Director, Division of Taxation.

Authority: N.J.S.A. 54:32B-24 and 54:32B-24.1.

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

Proposal Number: PRN 2018-055.

Submit comments by August 17, 2018, to:

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The agency proposal follows:

Summary

Pursuant to Executive Order No. 66 (1978) and N.J.S.A. 52:14B-5.1, N.J.A.C. 18:25 was scheduled to expire on May 13, 2018. As the Division of Taxation (Division) filed this notice of proposal with the Office of Administrative Law prior to that date, the expiration date of the chapter is extended 180 days to November 9, 2018, pursuant to N.J.S.A. 52:14B-5.1.c(2). 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 Division proposes to readopt these rules with necessary amendments to take into account recent statutory decreases in the sales and use tax rate.

Since 1947, cities of the fourth class have been authorized to enact ordinances to increase their revenue by levying and collecting taxes on certain retail sales pursuant to N.J.S.A. 40:48-8.15 et seq. To date, Atlantic City is the only fourth class city to enact an ordinance imposing such “luxury tax.”

Since 1980, the Director of the Division has had the duty and authority to administer the luxury tax pursuant to N.J.S.A. 54:32B-24.1. The luxury tax rules were first adopted in 1980. The chapter expired in 1985 (and was adopted as new rules the same year), and was readopted in 1991, 1996, 2000, 2006, and again in 2011. The Division proposes to again readopt N.J.A.C. 18:25.

P.L. 2016, c. 57 decreased the sales and use tax rate in two stages. As a result, the rules proposed for readoption must be amended to reflect the new sales and use tax rates.

N.J.A.C. 18:25 consists of two subchapters containing rules on general provisions and room and apartment rentals.

Throughout the chapter amendments are proposed to correct grammar, make technical changes, and incorporate plain language. In addition, the following specific amendments and repeal are proposed:

N.J.A.C. 18:25-1.2 is proposed for amendment to add the words “or seller” to the definition of “vendor” for clarity, and to add the definition of “apartment,” which is relocated from N.J.A.C. 18:25-2.2(b).

N.J.A.C. 18:25-1.3 is proposed for repeal because the information is outdated since returns are now filed electronically.

N.J.A.C. 18:25-1.5(b) is proposed for amendment to add the correct combined sales and use tax and luxury tax rates from July 15, 2006 through December 31, 2016, from January 1, 2017 through December 31, 2017, and from January 1, 2018, going forward. N.J.A.C. 18:25-1.5(c) and (d) are proposed for amendment to delete the previous sales and use tax rate of seven percent and replace it with “applicable rate as set forth in the Sales and Use Tax Act.” N.J.A.C. 18:25-1.5(d) is further proposed for amendment to add the correct combined sales and use tax and luxury tax rates on sales of alcohol from July 15, 2006 through December 31, 2016, from January 1, 2017 through December 31, 2017, and from January 1, 2018, going forward.

N.J.A.C. 18:25-2.2(a) is proposed for amendment to add “apartments” to the list of taxable rooms. N.J.A.C. 18:25-2.2(b) is proposed for deletion because the definition of “apartments” is proposed to be relocated to the definitions section, as discussed above.

N.J.A.C. 18:25-2.4(a)3 is proposed for amendment to replace the word “church or bona fide charitable association not conducted for profit” with the more general term “exempt organization,” to remove unnecessary language, and to add a cross-reference to N.J.A.C. 18:24-9.1, in order to provide more information about exempt organizations. N.J.A.C. 18:25-2.4(a)5 is proposed for amendment to delete an obsolete example. N.J.A.C. 18:25-2.4(b) is proposed for amendment to change “and apartments” to “or apartment” for clarity. N.J.A.C. 18:25-2.4(b) is also proposed for amendment to incorporate the example in N.J.A.C. 18:25-2.4(b)1 into this section with the following proposed amendments: to be reworded for clarity; to add language that clarifies that payment must be made from the organization’s funds; and to make grammatical corrections. N.J.A.C. 18:25-2.4(b)1 is proposed to be deleted because the example is proposed to be relocated into N.J.A.C. 18:25-2.4(b).

As 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 luxury tax was enacted to assist certain cities that had greatly enlarged municipal activities with no consequent revenue power to meet modern and expanding conditions. Sources of revenue in municipalities, particularly in cities of this State bordering the Atlantic Ocean that are seaside and summer resorts, are generally inadequate and insufficient to meet existing municipal obligations. The luxury tax gives such cities the power to increase their revenues through a tax on certain retail sales and services. The rules proposed for readoption with amendments and a repeal are intended to provide guidance to consumers, sellers, and service-providers in the Atlantic City area as to the application of the luxury tax that was designed to carry out this social and economic purpose.

The rules proposed for readoption with amendments and a repeal will have a positive social impact because they reflect the Division’s current policy on the application of the luxury tax. Clearer and more uniform rules should result in increased voluntary compliance. The rules proposed for readoption with amendments and a repeal will potentially

affect all businesses, public entities, private organizations, and individual consumers in Atlantic City, including out-of-State individuals and entities doing business in Atlantic City or making purchases there.

Economic Impact

Enactment of the rules proposed for readoption with amendments and a repeal would be revenue neutral since the Division is clarifying the application of the luxury tax. In the long term, the rules proposed for readoption with amendments and a repeal will protect the current luxury tax base and will result in an increased ability to collect luxury tax that is due, since taxpayer compliance will be facilitated by explaining the application of the luxury tax.

Federal Standards Statement

A Federal standards analysis is not required because the authority for the rules proposed for readoption with amendments and a repeal is based on N.J.S.A. 54:32B-24. The rules proposed for readoption with amendments and a repeal are, therefore, independent from any Federal standards or requirements.

Jobs Impact

The rules proposed for readoption with amendments and a repeal will not result in the creation or loss of jobs in New Jersey.

Agriculture Industry Impact

The rules proposed for readoption with amendments and a repeal will have no impact on entities within the agriculture industry in the State because the rules involve certain retail sales subject to the luxury tax and applicable tax rates.

Regulatory Flexibility Statement

The rules proposed for readoption with amendments and a repeal apply to small businesses in Atlantic City, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., as well as to businesses employing 100 people or more, full-time, in Atlantic City. The imposition of the tax and related compliance requirements must apply uniformly; any action to exempt taxpayers who may be small businesses as defined in the Regulatory Flexibility Act would not be in compliance with applicable statutes. The rules proposed for readoption with amendments and a repeal do not impose any new reporting, recordkeeping, or other compliance requirements on small businesses.

The Division has reviewed the rules proposed for readoption with amendments and a repeal, with a view to minimizing the impact of the rules on small businesses to the extent permissible by law. The Division is required to administer the tax laws uniformly, equitably, and efficiently to maximize revenues to support public services, and to ensure voluntary compliance with tax statutes without creating an impediment to economic growth. The Division has reviewed the application of the Regulatory Flexibility Act to the rules proposed for readoption with amendments and a repeal and because the tax rules must be applied uniformly and equitably, the Division cannot develop and apply special rules for small businesses different from the rules applied to all taxpayers.

Housing Affordability Impact Analysis

The rules proposed for readoption with amendments and a repeal would not result in a change in the average costs associated with housing or the affordability of housing. The rules proposed for readoption with amendments and a repeal would have no impact on any aspect of housing because the rules deal with certain retail sales subject to the luxury tax and applicable tax rates.

Smart Growth Development Impact Analysis

The rules proposed for readoption with amendments and a repeal 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 rules proposed for readoption with amendments and a repeal concern the administration of the luxury tax.

Full text of the rules proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 18:25.

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

SUBCHAPTER 1. GENERAL PROVISIONS

18:25-1.2 Definitions

The following words and terms when used in this chapter, shall have the following meanings unless context clearly indicates otherwise[.]:

“Apartment” means a complete housekeeping unit of real property, either constructed or modified for such use, which has as part of its permanent physical design, kitchen and bath facilities located within such unit.

...
“Luxury tax” means the Retail Sales Tax in Fourth Class Cities, N.J.S.A. 40:48-8.15[,] et seq. (P.L. 1947, [c.71] c. 71).

...
“Retail sale” or “sale at retail” means and includes:

1. Any sale in the ordinary course of business for consumption of whiskey, beer, or other alcoholic beverages by the drink in restaurants, cafes, bars, hotels, and other similar establishments;

2. Any cover charge, minimum charge, entertainment, or other similar charge made to any patron of any restaurant, cafe, bar, hotel, or other similar establishment;

3. (No change.)

4. The hiring of any rolling chair, beach chair, or cabana; and

5. The granting or sale of any ticket, license, or permit for admission to any theatre, moving picture exhibition or show, pier, exhibition, or place of amusement, except charges for admission to boxing, wrestling, kick boxing or combative sports events, matches, or exhibitions, which charges are taxed pursuant to section 20 of P.L. 1985, [c.83] c. 83 (N.J.S.A. 5:2A-20).

...
“Vendor” or “seller” means any person selling or hiring property or services to another person upon the receipts from which a tax is imposed.

18:25-1.3 [Luxury tax forms and instructions enumerated] (Reserved)

(a) ST-250, Combined Atlantic City luxury tax; State sales tax monthly return.

(b) ST-250A, Instructions for filing ST-250.]

18:25-1.5 Tax rates

(a) (No change.)

(b) [The] **From July 15, 2006 through December 31, 2016, the combined rate for sales subject to both the Atlantic City luxury tax and New Jersey sales and use tax is 13 percent (luxury tax at nine percent and sales and use tax at four percent). From January 1, 2017 through December 31, 2017, the combined rate for sales subject to both the Atlantic City luxury tax and New Jersey sales and use tax is 12.875 percent (luxury tax at nine percent and sales and use tax at 3.875 percent). Beginning January 1, 2018, the combined rate for sales subject to both the Atlantic City luxury tax and New Jersey sales and use tax is 12.625 percent (luxury tax at nine percent and sales and use tax at 3.625 percent).**

(c) Sales subject only to New Jersey sales and use tax are taxable at [a rate of seven percent] **the applicable rate as set forth in the Sales and Use Tax Act.**

(d) [Sales] **From July 15, 2006 through December 31, 2016, sales of alcoholic beverages by the drink in Atlantic City are taxable at the combined rate of 10 percent (luxury tax at three percent and sales and use tax at seven percent). From January 1, 2017 through December 31, 2017, the combined rate is 9.875 percent (luxury tax at three percent and sales and use tax at 6.875 percent). Beginning January 1, 2018, the combined rate is 9.625 percent (luxury tax at three percent and sales and use tax at 6.625 percent).** Sales of package goods are subject only to New Jersey sales and use tax at the [rate of seven percent] **applicable rate as set forth in the Sales and Use Tax Act.**

SUBCHAPTER 2. ROOM AND APARTMENT RENTALS

18:25-2.2 Luxury tax on room and apartment rentals

[(a)] The rental of a room or rooms, with or without service, in hotels, motels, rooming houses, inns, boarding houses, **apartments**, or private

homes is subject to luxury tax.

[(b)] The rental of apartments is subject to luxury tax. For the purposes of this subchapter, an apartment is defined to be a complete housekeeping unit of real property, either constructed or modified for such use, which has as part of its permanent physical design, kitchen and bath facilities located within such unit.]

18:25-2.4 Exemption from luxury tax on room and apartment rentals

(a) The following room and apartment rentals are exempt from luxury tax.

1. The rental of a room or rooms by a person who resides [therein] **in it** as a permanent resident of Atlantic City. A permanent resident is any person who:

i.-ii. (No change.)

2. The rental of a room or rooms or an apartment by any person where the rent is paid directly by an agency of New Jersey State, county, or municipal government, or by any agency of the United States of America. Where the rent is not paid directly by the governmental agency, it is subject to the luxury tax.

i. For example: A State government employee is in Atlantic City on government business. [He] **The employee** pays for the occupancy of a room in a motel[,] **and** the expense [to] **will** be reimbursed by an agency of State government. The rental is subject to luxury tax.

3. The room rents received by [a church or bona fide charitable association not conducted for profit] **an exempt organization**. This exemption is limited to rentals [which] **that** are directly related to the purpose for which the [church or association] **exempt organization** was organized. (See **N.J.A.C. 18:24-9.1**)

4. The isolated rental of a room, apartment, or single family dwelling by a person not engaged in a course of repeated and successive **similar** transactions [of like character].

5. That portion of a room rental attributable to the provision of food service to the occupant or boarder[; for example, American Plan].

6. (No change.)

(b) Every rental of a room or rooms [and] **or** apartment[s] is subject to luxury tax unless exempt from tax as provided in (a) above. There is no exemption from luxury tax by reason of an exemption from sales tax in this State.

[1.] For example[: An], **an organization** [holding a valid] **that has applied for and received a** New Jersey Exempt Organization Certificate (Form ST-5) arranges for the occupancy of rooms in a hotel for members attending a convention. The rental charge is invoiced to and directly paid by the organization. The room rentals are subject to luxury tax [inasmuch as said tax] **because the law** does not provide an exemption for such organizations. However, the room rentals are not subject to [the State] sales tax provided the vendor is given a copy of the organization’s [Exempt Organization Certificate (]Form ST-5)] by the organization] **and payment is made from the organization’s funds.** (See **N.J.A.C. 18:24-9.12**)[.]

(a)

DIVISION OF TAXATION

Spill Compensation and Control Tax

Proposed Readoption with Amendments: N.J.A.C. 18:37

Authorized By: John J. Ficara, Acting Director, Division of Taxation.

Authority: N.J.S.A. 58:10-23.11t.

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

Proposal Number: PRN 2018-054.

Submit written comments by August 17, 2018, to:

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