

TREASURY — TAXATION

(a)

DIVISION OF TAXATION

Corporation Business Tax

Electronic Filing

Gross Income Tax

Electronic Filing Methods

Proposed Amendments: N.J.A.C. 18:7-17.10 and 18:35-6.4

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

Authority: N.J.S.A. 54:10A-27; 54:50-1; and 54A:9-17(a).

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

Proposal Number: PRN 2011-047.

Submit comments by April 23, 2011 to:

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The agency proposal follows:

Summary

The proposed amendment to N.J.A.C. 18:35-6.4 lowers the practitioner e-file income tax return threshold from 25 or more tax individual gross income resident tax returns filed in the prior tax period, to 11 or more tax individual gross income resident tax returns a tax preparer anticipates filing during the tax year starting in 2011.

N.J.A.C. 18:35-6.4 provides that electronic filing is an authorized method of filing tax returns or other information required or permitted to be filed with the Division for purposes of the New Jersey Gross Income Tax Act. Electronic filing that occurs via any web-based transmittal application that is available and/or approved by the Director or the Federal/State e-file for tax professionals authorized by the Internal Revenue Service is acceptable electronic filing methods.

N.J.A.C. 18:35-6.4(b) requires tax preparers who have prepared or filed 200 or more individual gross income tax resident returns for the 2003 tax year to utilize electronic methods for filing for all individual gross income tax resident returns prepared or filed by the tax preparer for the 2004 tax year. This threshold to electronically file all individual gross income tax resident returns prepared or filed was previously expanded to include preparers that prepared or filed 100 or more returns for the 2005 tax year (see subsection (c)), preparers that prepared or filed 50 or more returns for the 2006 year (see subsection (d)) and preparers that prepared or filed 25 or more returns for the 2007 tax year (see subsection (e)).

New subsection (f) provides the requirement to electronically file all individual gross income tax resident returns prepared by preparers that anticipate preparing or filing 11 or more such returns during the tax year.

In seeking to enhance the current e-file mandate pertaining to partnership informational returns principally in relation to the Modernized e-File program, the proposed amendment to N.J.A.C. 18:7-17.10 changes the current e-filing requirement that all partnerships with 10 or more partners file electronically, to requiring paid tax practitioners to e-file all partnership returns that they prepare during the tax year, while maintaining the threshold for all non-practitioner returns. The amendment also requires that payment of partnership liabilities along with the submission of payment-related returns be made by electronic means as well.

The amendments are being proposed pursuant to the authority of the Director provided under N.J.S.A. 54:50-1 to make and enforce such rules and regulations he may deem necessary in carrying into effect this State's tax laws.

Because the Division has provided a 60-day comment period on 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 proposed amendments help to harmonize New Jersey's electronic filing rules for paid tax practitioners with evolving Federal requirements with regard to the filing of individual gross income tax returns (which includes returns filed for trusts and estates), partnership returns and the submission of partnership liabilities and payment-related returns.

A Federal e-file mandate was approved and enacted as part of the Worker, Homeownership, and Business Assistance Act of 2009 (PL 111-92), which amends I.R.C. §6011. After December 31, 2010, tax preparers are required to file all Federal individual gross income tax returns electronically if they prepare 11 or more such returns during the tax year. The Federal requirement is expected to be phased-in over two years. Starting January 1, 2011, tax preparers who anticipate preparing 100 or more Federal individual returns that year will have to file all such returns electronically. Beginning January 1, 2012, the amount of Federal individual income tax returns a preparer expects to prepare during the year to require mandatory e-filing of all such returns will be reduced to 11 or more.

The proposed changes allow New Jersey's e-filing rules for paid tax practitioners to complement Federal laws. The proposed changes to the rules will help provide clarity and consistency with regard to the on-going Federal/State 1040 e-file program, which accounts for approximately 96 percent of all e-file 1040 transactions each year. The proposed changes will help to facilitate migration of New Jersey's partnership system to the highly efficient, one-stop, Federal/State MeF format setting the stage for greater standardization and simplification of the partnership filing system. It is anticipated that the enhanced mandates will increase electronic filings even more and help bolster compliance rates through systematic features that ensure timeliness, accuracy, reliability/availability and convenience. The Division believes that although the proposed changes, which may initially result in additional expense to the State, expenses will be ultimately reduced by the reduction of paper filing volume.

Economic Impact

The proposed amendments lower the existing thresholds for electronic filing of individual income tax resident and partnership returns, and require payment of partnership liabilities by electronic means. Consequently, preparers and software companies will have to make changes to their systems. However, the Division anticipates that any additional expense incurred will have a nominal economic impact on the accounting industry, and such costs may be reduced by increased productivity and lowering of paper filing volume. Since the mandates were first implemented, the Division saw a significant increase in electronically filed gross income tax resident and partnership returns.

Federal Standards Statement

The proposed amendments do not contain any requirements that exceed those imposed by Federal law. The amendments reflect an administrative policy of the Division of Taxation that is not subject to any Federal regulatory requirement or standards.

Jobs Impact

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

Agriculture Industry Impact

The proposed amendments will have no impact on the agriculture industry.

Regulatory Flexibility Analysis

The proposed amendments apply to small businesses, as the term is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The mandates for electronic filing set forth in N.J.A.C. 18:35-6.4 and 18:7-17.10 apply to tax preparers that prepare or file a certain number of individual gross income tax resident returns and partnership returns and expanding the number affected businesses by lowering the threshold amounts that require electronic filing of all returns. Over time, the Division anticipates that the mandate in broad terms will likely affect the majority of those accounting firms or tax preparer services that file

individual gross income tax resident and partnership returns. As stated above, the Division hopes that the thresholds set forth in the amendments will have nominal impact. While implementation of the proposed changes may initially result in additional expense to the industry as well as the State, it is anticipated that such costs will ultimately be reduced by increased productivity and the reduction of paper filing volume.

The Division of Taxation, consistent with its mission, reviews its rule proposals with a view to minimize the impact of its rules on small businesses to the extent possible. The mission of the Division is to administer the State's tax laws uniformly, equitably and efficiently, to maximize State revenues to support public services and to ensure that voluntary compliance with the taxing statutes is achieved without being an impediment to economic growth.

The proposed amendments would apply to any company, including those which may be considered a small business as defined in the Regulatory Flexibility Act. Because the Division applies the tax rules uniformly and equitably, the Division does not develop and apply special rules for small businesses that would be different from the rules applied to other parties. In this respect, the Division strives to maintain a "level playing field." Any potential increase in capital costs is discussed in the Economic Impact above, and the Division is not able to establish different standards for large and small businesses under the factual circumstances addressed by the proposed amendments.

Smart Growth Statement

The proposed amendments will have no impact on the achievement of smart growth and implementation of the Smart Growth Development Plan.

Housing Affordability Impact

The proposed amendments would not result in a change in the average costs associated with housing. The proposed amendments have no impact on any aspect of housing because they deal with the electronic filing of New Jersey Gross Income Tax resident returns and partnership returns, and the payment of partnership liabilities by electronic means.

Smart Growth Development Impact

The proposed amendments would not result in a change in the housing production within the Planning Areas 1 or 2, within designated centers, under the State Development and Redevelopment Plan. The basis for this finding is that the proposed amendments have nothing to do with housing production, either within Planning Area 1 or 2, within designated centers, or anywhere in the State of New Jersey. The proposed amendments deal with the electronic filing of New Jersey Gross Income Tax resident returns and partnership returns, and payment of partnership liabilities by electronic means.

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

CHAPTER 7 CORPORATION BUSINESS TAX ACT

SUBCHAPTER 17. PARTNERSHIPS

18:7-17.10 Electronic filing

(a) A partnership subject to the provisions of the corporation business tax shall file its return and make payment of its liability by electronic means, if it has 10 or more partners[,], **provided that the return is not prepared by a paid tax preparer. Payments of partnership liabilities along with the submission of payment-related returns, such as the Partnership Return Voucher (Form Part-100) and the Partnership Tentative Return and Application for Extension of Time to File (Form Part 200-T), by a partnership with more than 10 partners shall be made electronically.**

(b) **A paid tax preparer who prepares returns for partnerships subject to the provisions of the corporation business tax shall file all of the partnership returns prepared by that preparer during the tax year as instructed by the partners of the partnership, by electronic means. Payments of the partnership liabilities along with the submission of payment-related returns, such as the Partnership Return Voucher (Form Part-100) and the Partnership Tentative**

Return and Application for Extension of Time to File (Form Part 200-T), either by the partners or by a paid tax practitioner as instructed by the partners of the partnership shall be made electronically.

CHAPTER 35 NEW JERSEY GROSS INCOME TAX

SUBCHAPTER 6. EXTENSIONS OF TIME TO FILE; RETURN REQUIREMENTS

18:35-6.4 Electronic filing methods

(a) (No change.)

(b) Beginning with the 2004 taxable year, tax preparers that prepared or filed 200 or more individual gross income tax resident returns for the prior taxable year must use electronic methods for filing individual gross income tax resident returns and may pay the tax on behalf of the taxpayer in accordance with instructions published by the Director for all the returns prepared or filed by the preparer, subject to such exceptions as the Director determines are reasonable or as otherwise set forth in [(h)] **(i)** below. As a result of changes in technology, the Director shall determine which electronic methods of filing returns and paying tax satisfy the requirements imposed in this section.

(c) For the 2006 taxable year, preparers that have prepared or filed 100 or more individual gross income tax resident returns for the prior taxable year must use electronic methods for filing individual gross income tax resident returns and may pay the tax on behalf of the taxpayer in accordance with instructions published by the Director for all the returns prepared or filed by the preparer, subject to such exceptions as the Director determines are reasonable or as otherwise set forth in subsection [(h)] **(i)** below. As a result of changes in technology, the Director shall determine which electronic methods of filing returns and paying tax satisfy the requirements imposed in this section.

(d) For the 2007 taxable year, preparers that have prepared or filed 50 or more individual gross income tax resident returns for [a] **the** prior taxable year must use electronic methods for filing individual gross income tax resident returns and may pay the tax on behalf of the taxpayer in accordance with instructions published by the Director for all the returns prepared or filed by the preparer, subject to such exceptions as the Director determines are reasonable or as otherwise set forth in [(f) and (h)] **(g) and (i)** below. As a result of changes in technology, the Director shall determine which electronic methods of filing returns and paying tax satisfy the requirements imposed in this section.

(e) For the 2008 [and later] taxable year[s], preparers that have prepared or filed 25 or more individual gross income tax resident returns for [a] **the** prior taxable year must use electronic methods for filing individual gross income tax resident returns and may pay the tax on behalf of the taxpayer in accordance with instructions published by the Director for all the returns prepared or filed by the preparer, subject to such exceptions as the Director determines are reasonable or as otherwise set forth in [(f) and (h)] **(g) and (i)** below. As a result of changes in technology, the Director shall determine which electronic methods of filing returns and paying tax satisfy the requirements imposed in this section.

(f) For the 2011 taxable year and later, preparers that reasonably expect to prepare 11 or more individual gross income tax resident returns (including those filed for trusts and estates) during the tax year must use electronic methods for filing such returns and may pay the tax on behalf of the taxpayers in accordance with instructions published by the Director for all the individual gross income tax resident returns prepared or filed by the preparer, subject to such exceptions as the Director determines are reasonable or as otherwise set forth in (g) and (i) below. As a result of changes in technology, the Director shall determine which electronic methods of filing returns and paying tax satisfy the requirements imposed in this section.

[(f)] **(g)** A civil union couple may file joint State gross income tax returns for tax year 2007 and thereafter. Federal law, however, does not allow for a joint filing of Federal gross income tax returns by a civil union couple. Where joint State/Federal electronic joint filing is not possible, a civil union couple's tax preparer may file a civil union couple's joint State gross income tax paper return without penalty where

electronic joint filing under the Federal return would be prohibited. Civil union couple joint filings shall count toward the thresholds established in (b), (c), (d), [and] (e) **and (f)** above. Nothing in this subsection shall prevent a civil union couple from filing a joint return as indicated in N.J.A.C. 18:35-4.3.

[(g)] **(h)** (No change in text).

[(h)] **(i)** If (b), (c), (d), [and/or] (e) **and/or (f)** above are applicable to a tax preparer, and if a taxpayer chooses not to have his or her return electronically filed by his or her tax preparer or for the reasons set forth

in [(f)] **(g)** above, is unable to file State and Federal joint returns electronically, both the taxpayer and the preparer must complete an E-File Opt Out Request Form (NJ-1040-O). The tax preparer is required to keep the completed and signed E-File Opt Out Request Form in his or her files and available for inspection by a representative of the New Jersey Division of Taxation. No tax preparer who is required to e-file returns shall be penalized under N.J.S.A. 54A:8-6.1(e) for paper returns filed to the taxpayer opting-out of e-filing.
