

Chapter 1

General Administrative Provision for New Jersey State Taxes

Alan Rubin
Cole Schotz P.C.

- 1-1 DIRECTOR, DIVISION OF TAXATION—OVERVIEW
- 1-2 CLOSING AGREEMENTS
- 1-3 COMPROMISES
- 1-4 EXAMINATION OF TAXPAYER'S RECORDS
- 1-5 HEARINGS
- 1-6 DIRECTOR'S RECORDS
- 1-7 PERSONAL LIABILITY OF TAXPAYER—TAX LIENS—
WARRANT
- 1-8 AGREEMENTS WITH OTHER STATES
- 1-9 COLLECTION OF OTHER STATES' TAXES IN NEW
JERSEY COURTS
- 1-10 DELINQUENT CORPORATIONS
- 1-11 ASSESSMENTS BY THE DIRECTOR OF THE
DIVISION OF TAXATION
- 1-12 LIMITATIONS ON ASSESSMENT
- 1-13 PROTESTS; HEARING BY THE DIRECTOR
- 1-14 PAYMENT OF TAX—REGULAR ASSESSMENTS
- 1-15 PAYMENT OF TAX IN REGARD TO ARBITRARY OR
JEOPARDY ASSESSMENTS
- 1-16 APPEALS TO THE TAX COURT
- 1-17 REFUNDS
- 1-18 TAX CLEARANCE

- 1-19 INTEREST ON DELINQUENT TAXES**
- 1-20 WAIVER OF PENALTY**
- 1-21 PENALTIES ON DELINQUENT TAXES**
- 1-22 CRIMINAL PENALTIES**
- 1-23 WAIVER OF PENALTIES**
- 1-24 CERTIFICATE OF DEBT**
- 1-25 DAMAGE ACTIONS**

1-1 DIRECTOR, DIVISION OF TAXATION— OVERVIEW

Most taxes are administered by the Director of the Division of Taxation in the Department of Treasury. The Director has the power to do the following: conduct hearings and investigations; subpoena witnesses; administer oaths; investigate and examine assessors and change assessments. In regard to state taxes, the State Tax Uniform Procedure Law found at N.J.S.A. 54:48-1 through 54:54-6 supplements the assessment and collection procedures of the various state taxes administered by the Director. The State Tax Uniform Procedure Law is applied unless a particular state tax statute controls.

1-2 CLOSING AGREEMENTS

The Director is authorized to enter into a written agreement concerning liability for any state tax. A case may not be reopened as to matters covered by a closing agreement except on a showing of fraud, malfeasance or misrepresentation of fact. A request for a closing agreement relating to prior taxable periods may be submitted at any time before a case with respect to the tax liability involved is filed in Tax Court [N.J.S.A. 54:53-1 - 54:53-6].

1-3 COMPROMISES

The Director may compromise criminal and civil penalties arising under the tax laws prior to referral to the attorney general for prosecution or defense, but only when there is doubt as to liability or collectability. Offers must be in writing. An offer relates to the total liability of the taxpayer and does not automatically stay the collection process. However, enforcement of collection may be deferred only if the interests of the state are not jeopardized.

The Director may compromise the time for payment of a liability arising under the state tax laws, but only on the grounds that:

(1) the equities of the taxpayer's liability indicate that a compromise would be in the state's interest, and (2) without such a compromise, the taxpayer would experience extreme financial hardship. A delayed payment or installment payment compromise agreement must include interest on the unpaid balance of the liability at the rate of three percentage points above the prime rate.

No compromised matters may be reopened unless there has been falsification or concealment of assets by the taxpayer, mutual mistake as to a material fact which would cause a contract to be set aside or a significant change in the financial condition of a taxpayer with whom the Director has entered into an agreement regarding the time for payment of a tax liability.

The Director may require the taxpayer to provide periodic statements of financial condition. Action may be taken by the Director against taxpayers with whom the Director has entered into an agreement regarding the time for payment of a tax liability, provided the Director gives notice 30 days before the date of any action and the notice states the reasons the Director has for believing that a significant change in the financial condition of the taxpayer has occurred [N.J.S.A. 54:53-7 - 54:53-15].

1-4 EXAMINATION OF TAXPAYER'S RECORDS

The Director may examine the taxpayer's place of business, tangible personal property, books, records, papers, vouchers, accounts and documents [N.J.S.A. 54:50-2]. If the Director conducts an examination of the books, records, papers, vouchers or accounts of a taxpayer on the premises of the taxpayer's agent, the taxpayer will provide the agent written evidence that the agent is authorized to act on his behalf in making any application, deposition, statement or report required by the Director in the administration of any tax law. The agent must then produce the authorization to the Division of Taxation representative [N.J.S.A. 54:50-2.1].

If a Division of Taxation employee conducts an in-person interview with a taxpayer regarding a determination or collection of tax, the employee must, upon the taxpayer's advance request, allow the taxpayer to record the interview, with the taxpayer's

equipment and at the taxpayer's expense, provided that the Division of Taxation employee also has the right to record. If the taxpayer is given advance notice, the employee may also record the interview provided that the employee gives the taxpayer a copy of the recording upon reimbursement for the cost of the copy by the taxpayer.

If the employee conducts an interview regarding the determination or the collection process of a tax, the employee must provide the taxpayer with explanations of the audit process or the collection process and the taxpayer's rights pursuant to that process [N.J.S.A. 54:50-2.2].

1-5 HEARINGS

The commissioner, or any employee of the state tax department appointed by him, may conduct hearings, administer oaths to and examine under oath any taxpayer or his directors, officers, agents and employees, as well as any other witnesses relative to the business of such taxpayer in respect to any state tax law. The Director may subpoena to compel the attendance of a witness and the production of any books, records, papers, vouchers, accounts or documents of any taxpayer or witness that the Director has reason to believe has information relevant to the investigation. If a person is subpoenaed to attend a hearing and fails to appear or produce the requested information, the Director may apply to the Superior Court for an order compelling him to do so [N.J.S.A. 54:50-3 - 54:50-5].

1-6 DIRECTOR'S RECORDS

The records and files of the Director regarding the State Tax Uniform Procedure Law or any New Jersey State tax shall be confidential and privileged. Neither the Director nor any employee shall be required to produce any of these records or files for the inspection of any person or for use in any action or proceeding, unless the records or files are involved in an action or proceeding under provisions of the State Tax Uniform Procedure Law or state tax law affected, or where the determination of the action will affect the validity or amount of the claim of the state under some state tax law, or in any lawful proceeding for the investigation and prosecution of any violation of the criminal provisions of

the State Tax Uniform Procedure Law or of any state tax law [N.J.S.A. 54:50-8].

1-7 PERSONAL LIABILITY OF TAXPAYER—TAX LIENS—WARRANT

Any state tax, fee, interest or penalty becomes a personal debt of the taxpayer to the state, recoverable in the New Jersey courts, on its due date. The debt, whether sued upon or not, is a lien on all the property of the debtor, except as against an innocent purchaser for value in the usual course of business and without notice, and except as may be provided to the contrary in any other law, and has preference in the distribution of assets, whether in bankruptcy, insolvency or otherwise.

The Director of the Division of Taxation may release any property from the lien of any certificate, judgment or levy procured by him upon either the payment of adequate consideration or the deposit of adequate security.

The Director is also authorized to issue a warrant, directed to the sheriff of any county or to an officer or employee of the Division of Taxation, for a levy upon and sale of the property of any person liable for a state tax [N.J.S.A. 54:49-1 - 54:49-13a].

1-8 AGREEMENTS WITH OTHER STATES

For purposes of administering the State Tax Uniform Procedure Law or any state tax law, the Director may enter into agreements with other states, the District of Columbia or the United States providing for reciprocal enforcement and administration of any tax imposed by those jurisdictions. Duly authorized officers of other jurisdictions that reciprocate can sue for collection of their taxes in New Jersey courts [N.J.S.A. 54:50-2].

New Jersey has a reciprocal sales tax enforcement agreement with New York and a reciprocal personal income tax agreement with Pennsylvania [Executive Statement of Governors Hughes and Rockefeller, 6 May 1962; Reciprocal Personal Income Tax Agreement between Commonwealth of Pennsylvania and State of New Jersey, 19 October 1977]. New Jersey also has an income tax information exchange agreement with the northeastern states and reciprocal recognition of sales tax credit with many states.

If the state treasurer finds that (1) the laws of another jurisdiction offer tax advantages to residents of New Jersey contingent on agreement that New Jersey will furnish information about residents of that jurisdiction who work in New Jersey, and (2) an agreement would be lawful and not too burdensome, he can make an exchange of information agreement. He must file his finding with the secretary of state [N.J.S.A. 34:11-33.3]. If an agreement with a foreign taxing jurisdiction is in force, the Division of Taxation can require employers to provide information in regard to names and address, in such jurisdiction, of persons employed by them who reside in such jurisdiction [N.J.S.A. 34:11-33.4].

Firms employing persons in New Jersey who are residents of a foreign taxing jurisdiction, signatory to a tax advantage agreement described above, can deduct and withhold for crediting such amount on account of such income or wage tax due from such employee to the other jurisdiction. Such amount is held in trust for the other jurisdiction [N.J.S.A. 34:11-33.6]. No employer can withhold or divert any portion of an employee's wages unless [N.J.S.A. 34:11-4.4]:

- 1) the employer is required or empowered to do so by law; or
- 2) the amounts withheld or diverted are for contributions authorized in writing by employees, or under a collective bargaining agreement, to employee welfare, insurance, hospitalization, medical or surgical or both, pension, retirement and profit-sharing plans, and to plans establishing individual retirement annuities, or individual retirement accounts at any state or federally chartered bank, savings bank or savings and loan association, for the employee, his spouse or both; or
- 3) the amounts withheld or diverted are for contributions authorized by employees for payment into company-operated thrift plans; or security option or security purchase plans to buy securities of the employing corporation, an affiliated corporation or other corporations at

market price or less, provided such securities are listed on a stock exchange or are marketable over the counter; or the amounts withheld or diverted are for payments authorized by employees into employee personal savings accounts or savings funds, provided all such deductions are approved by the employer; or

- 4) the amounts withheld or diverted are for payments for company products purchased in accordance with a periodic payment schedule contained in the original purchase agreement; payments for employer loans to employees, in accordance with a periodic payment schedule contained in the original loan agreement; payments for safety equipment; payments for the purchase of United States Government bonds; payments to correct payroll errors; and payments of costs and related fees for the replacement of employee identification, provided all such deductions are approved by the employer; or
- 5) the amounts withheld or diverted are for contributions authorized by employees for organized and generally recognized charities, provided the deductions for such contributions are approved by the employer; or
- 6) the amounts withheld or diverted are for payments authorized by employees for the rental or cleaning of work clothing or uniforms, provided the deductions for such payments are approved by the employer; or
- 7) the amounts withheld or diverted are for labor organization dues and initiation fees, and such other labor organization charges permitted by law; or
- 8) the amounts withheld and diverted are for contributions authorized in writing by employees, pursuant to a collective bargaining

agreement, to a political committee, continuing political committee, or both, established by the employees' labor union for the purpose of making contributions to aid or promote the nomination, election or defeat of any candidate for a public office, subject to the conditions specified in N.J.S.A. 34:11-4.4a; or

- 9) the amounts withheld or diverted are for contributions authorized in writing by employees to any political committee, for the purpose of making contributions to aid, defeat, or promote any candidate for a public office, subject to the conditions specified in N.J.S.A. 34:11-4.4a; in making a payroll deduction pursuant to this paragraph the administrative expenses incurred by the employer shall be borne by such committee, at the option of the employer; or
- 10) the amounts withheld or diverted are for payments authorized by employees for employer-sponsored programs for the purchase of insurance or annuities on a group or individual basis, if otherwise permitted by law; or
- 11) the amounts withheld or diverted are for such other contributions, deductions and payments as the Commissioner of Labor may authorize by regulation as proper and in conformity with the intent and purpose of this act, if such deductions are approved by the employer [N.J.S.A. 34:11-4.4].

1-9 COLLECTION OF OTHER STATES' TAXES IN NEW JERSEY COURTS

New Jersey courts will enforce other states' sales-use taxes on a reciprocal basis, so long as such state has a reciprocal agreement to permit New Jersey to enforce its sales and use tax collection in such state [N.J.S.A. 54:32B-23].

To enforce its taxes owed by New Jersey residents in New Jersey courts, the City of Philadelphia had to resort to the Full Faith and Credit Clause of the U.S. Constitution. *City of Philadelphia*

v. Austin, 86 N.J. 55, 429 A.2d 568 (1981). This requires each state to honor judgments made in other states' courts (U.S. Const. art. IV, § 1).

1-10 DELINQUENT CORPORATIONS

If a domestic corporation does not pay any state tax assessed against it for two consecutive years, the Director of the Division of Taxation must report this to the secretary of state by the first Monday in January. The secretary must proclaim such corporation's charter void. The secretary can extend the time for payment. The secretary can correct errors in the list and proclaim charters still valid [N.J.S.A. 54:11-1, 54:11-2, 54:11-4].

A charter and privileges can be reinstated on payment to the secretary of state of a reasonable sum in lieu of taxes and penalties as determined by him or her and the attorney general. Such sum cannot be less than the fees required for filing the original certification of incorporation. These provisions for reinstatement do not apply to gas, electric light, telephone, telegraph, water, pipeline, Street Railway Company or other corporations with the right to use public streets or to take and condemn lands [N.J.S.A. 54:11-5].

**1-11 ASSESSMENTS BY THE DIRECTOR OF THE
DIVISION OF TAXATION**

The State Tax Uniform Procedure Law gives the Director of the Division of Taxation the power to make assessments.

When a return is filed, the Director may issue a deficiency assessment. The Director may determine that there is a deficiency with respect to the payment of tax upon examination of the taxpayer's return and/or upon an audit or investigation. The Director assesses the additional taxes, penalties and interest (imposed as in the case of delinquent payment), gives notice of the assessment to the taxpayer and makes a demand upon the taxpayer for payment.

If a taxpayer fails to make any report required by law, the Director can make an arbitrary assessment from such information he or she can obtain. If the taxpayer fails to file a report as required, the Director may estimate the tax liability from any available information and may assess taxes, fees, penalties and interest due

from the taxpayer. The Director must give notice to the taxpayer and make demand upon the taxpayer for payment.

If the Director has reason to believe that the taxpayer plans to remove himself or his property from the state, the Director is authorized to make a jeopardy assessment, even if no return is due. Under such arbitrary assessment, the Director may proceed to collect the tax or compel security for the tax and thereafter give notice of the finding to the taxpayer, along with a demand for an immediate report and immediate payment of tax [N.J.S.A. 54:49-5 - 54:49-7].

The State Tax Uniform Procedure Law requires the taxpayer to pay all taxes, penalties and interest within 15 days after a demand by the Director following an arbitrary or jeopardy assessment. If the sum demanded is not paid within 15 days, an additional penalty in the amount of five percent of the tax is imposed [N.J.S.A. 54:49-8, 54:49-9].

Notices of assessment related to final audit determination and “Notice and Demand for Payment of Tax” letters are sent by registered or certified mail [N.J.S.A. 54:50-6.1].

1-12 LIMITATIONS ON ASSESSMENT

Assessments of additional tax may not be made more than four years from the date of the filing of a return, unless a shorter time is provided in the particular state tax statute or a longer time is consented to by the taxpayer. (Postmark date is the filing date for all state tax returns.) The tax may be assessed at any time in the case of a false or fraudulent return with intent to evade the tax, or failure to file a return.

If a shorter time for the assessment of additional tax is fixed by the law imposing the tax, the shorter time governs.

Taxpayers may consent in writing to an extension of time for assessment of tax, in which case the amount of such additional tax due may be determined at any time within the extended period. The period may be further extended by subsequent consents in writing made before the expiration of the extended period [N.J.S.A. 54:49-6].

1-13 PROTESTS; HEARING BY THE DIRECTOR

A taxpayer may request a hearing at the Division of Taxation level within 90 days of the date of the finding or notice of assessment.

**PAYMENT OF TAX IN REGARD TO ARBITRARY
OR JEOPARDY ASSESSMENTS**

1-15

This request should be in writing. The content of the protest can be found at N.J.S.A. 54:49-18.

Effective for taxable years beginning on or after January 1, 1999, taxpayers can appeal denials of claims for refund if payment is made within one year after the original 90-day protest period for assessment expired and if the claim is filed within 450 days after the assessment protest period expired [N.J.S.A. 54:49-14].

The administrative hearing is an informal conference handled by a conferee within the Hearings and Conference Branch of the Division. Although the taxpayer has the option of filing a complaint in the Tax Court upon the receipt of the notice of assessment, a hearing is generally recommended. It is one further opportunity for the taxpayer to present his case to the Division in the hopes of reaching a favorable compromise.

The Division of Taxation has taken the position that a conference is required prior to filing in Tax Court. There is no statutory authority for this position. The Director will issue a final determination letter at the conclusion of the hearing process [N.J.S.A. 54:49-18].

**1-14 PAYMENT OF TAX—REGULAR
ASSESSMENTS**

The filing of a protest or appeal does generally stay the collection of tax until 90 days after the Director's final determination, provided the taxpayer furnishes security where required. Security is generally not required where the amount is less than \$10,000. Contested assessments of more than \$10,000 do not require security unless there is a substantial risk, based upon history and financial condition, that the taxpayer will fail or will be unable to pay [N.J.S.A. 54:49-2, 54:49-18].

**1-15 PAYMENT OF TAX IN REGARD TO
ARBITRARY OR JEOPARDY ASSESSMENTS**

The taxpayer is required to pay all taxes, penalties and interest within 15 days after a demand by the Director following an arbitrary or jeopardy assessment. The law provides that if the sum demanded is not paid within 15 days, an additional penalty in the amount of five percent of the tax is imposed. The filing of

a protest or appeal does not stay the collection [N.J.S.A. 54:49-8, 54:49-9, N.J.S.A. 54:49-18].

1-16 APPEALS TO THE TAX COURT

Any party who is dissatisfied with the judgment, action or determination of the county board of taxation may seek review in the Tax Court by filing a complaint in the Tax Court. At the time the complaint has been filed seeking review, all taxes or installments thereof then due and payable for the year for which review is sought must have been paid, although the Tax Court may choose to relax the requirement in the interest of justice. There will be no review if the appeal has been withdrawn at the hearing, dismissed because of failure to prosecute the appeal at a hearing called by the county tax board or settled between the taxpayer and the assessor of the taxing district [N.J.S.A. 54:51A-1].

A taxpayer has 90 days to appeal to the Tax Court from a final determination letter of the Director. The New Jersey Tax Court was created in 1979 to hear and determine cases involving state taxation and local property taxation. An appeal from an action, proceeding, ruling, decision, order or judgment of the Director of the Division of Taxation is made to the New Jersey Tax Court.

An appeal to the Tax Court is the exclusive remedy of a taxpayer in controversies over decisions of the Division of Taxation or any other state taxing authority. The court has published hundreds of judicial opinions on all aspects of state and local taxation. Any attorney admitted to practice before the New Jersey Supreme Court may appear in the Tax Court. Accountants and corporate officers may not appear in the Tax Court on behalf of clients. The court hears cases without a jury. The rules governing practice and procedure in the Tax Court are set forth in Part VIII of the New Jersey Court Rules.

Once a complaint is filed, the discovery process starts, which involves pretrial conferences and interrogatories. During this phase of the litigation, it is possible for settlements to be worked out with the Director through the deputy attorney general.

A prevailing taxpayer in a court proceeding in connection with the determination, collection or refund of any tax, penalty or interest may be awarded a judgment or settlement or reasonable litigation costs, not to exceed \$15,000, incurred in the proceedings,

based upon: (1) the reasonable expenses of expert witnesses; (2) the reasonable costs of studies, reports or tests; and (3) the reasonable fees of attorneys, not to exceed \$75 per hour, unless the court specially determines the existence of a special factor.

The award may be made only for the costs allocable to the state, and not to any other party. No award may be made with respect to any portion of the proceedings during which the prevailing taxpayer has unreasonably protracted the proceedings. The term “prevailing taxpayer” refers to a taxpayer who, in the decision of the court, establishes that the position of the state was without reasonable basis in fact or law.

Whenever it appears to the court that proceedings have been instituted or maintained by the taxpayer primarily for delay, that the taxpayer’s position in the proceedings is without grounds, or that the taxpayer unreasonably failed to pursue administrative remedies, the state may be awarded a judgment or settlement for its reasonable litigation costs, not to exceed \$15,000, incurred in the proceedings [N.J.S.A. 54:51A-13 - 54:51A-23].

1-17 REFUNDS

Effective July 1, 1993, refund claims may be filed within four years after the payment of any original or additional tax (unless a shorter limit is fixed by the law imposing the tax) [N.J.S.A. 54:49-14]. A three-year limitation is specified for personal income tax [N.J.S.A. 54A:9-8].

Prior to July 1, 1993, claims for refund were to be filed within two years after payment of tax. A denial of refund must be protested within 90 days [N.J.S.A. 54:49-18]. The taxpayer has 90 days to appeal to the Tax Court from a final determination of the Director denying a refund [N.J.S.A. 54:51A-14(a)]. The taxpayer must be notified if the claim for refund is rejected in whole or in part.

The signing of an agreement by the taxpayer and the Director extending the period for assessment specifically extends the period for filing a claim for refund. Each taxpayer is required to file a separate refund claim.

If, upon examination of a refund claim, it is determined that there has been an overpayment of tax, the amount of the overpayment and the interest on the overpayment, if any, will be credited against any liability of the taxpayer under any state tax law. If the taxpayer

has no liability, the taxpayer will be entitled to a refund of the tax so overpaid and the interest on the overpayment, if any.

Interest is paid on overpayments of tax at the prime rate as determined by the Director for returns due and filed after January 1, 1994. Interest accrues from the latter of the date on which the taxpayer files a claim for refund or requests adjustment, the date on which the tax is paid or the due date of the report or return. No interest may be paid on an overpayment of less than \$1, nor upon overpayments refunded within six months after the latter of the last date prescribed (or permitted by extension of time) for filing the return or the actual date on which the return is filed [N.J.S.A. 54:49-14 - 54:49-16; N.J.A.C. 18:2-5.9].

1-18 TAX CLEARANCE

Until all state taxes (including fees, penalties and interest) are paid, or provision for payment has been made as noted below, no domestic corporation or foreign corporation subject to New Jersey tax may merge or consolidate into a foreign corporation not authorized to do business in New Jersey. Further, no domestic corporation may dissolve and no domestic or foreign corporation may distribute its assets in dissolution or liquidation to any shareholder. These provisions do not apply to a merger or consolidation of a domestic corporation into a domestic or authorized foreign corporation.

The Secretary of State is not permitted to accept a certificate of dissolution, merger or consolidation of a domestic corporation, or issue a certificate of withdrawal to a foreign corporation, unless the company files a tax clearance certificate issued by the Director of the Division of Taxation not more than 45 days prior to the effective date of the corporate action.

Generally, the Director will issue a tax clearance certificate only if all taxes due have been paid, including taxes shown on an estimated return for the period between the due date of the last regular return and the effective date of the action. However, the tax clearance may be obtained without prior payment of the estimated taxes if:

- 1) another domestic or authorized foreign corporation certifies that it will make timely payment of all taxes due by the company applying for clearance, and that the certifying company

has a net worth of at least 10 times the amount of taxes paid by the applicant for the last complete tax year; or

- 2) in the case of dissolution, or distribution of assets in dissolution or liquidation, timely payment is guaranteed by the shareholders of domestic or authorized foreign corporations which own a majority of the applicant's stock, or by a domestic or authorized foreign corporation acquiring the applicant's assets in exchange for the guarantor's stock. An opinion by a New Jersey attorney that all requirements have been met must be included.

The Director may also require evidence that an unauthorized corporation which is a party to the transaction has paid any taxes owed to the state [N.J.S.A. 54:50-12 - 54:50-18].

1-19 INTEREST ON DELINQUENT TAXES

After July 1, 1993, the interest is the prime rate plus three points and not compounded [N.J.S.A. 54:49-11].

Regulation 18:2-2.11 defines "prime rate" as the average predominant prime rate, as determined by the Board of Governors of the Federal Reserve System, quoted by commercial banks to large businesses as of the first business day of the calendar quarter immediately preceding the quarter within which the payment was due. Interest is calculated from the date the tax was originally due until the date of actual payment [N.J.S.A. 54:48-2, 54:49-3, 54:49-6, 54:49-11]. At the end of each calendar year, any tax, penalty and interest remaining unpaid becomes part of the balance on which interest is charged [N.J.S.A. 54:49-10].

1-20 WAIVER OF PENALTY

The Director shall waive the payment of any penalty or interest if:

- 1) an employee of the Division of Taxation acting in their official capacity furnished written advice;
- 2) the advice is based on adequate and accurate information from the taxpayer;
- 3) the advice is erroneous; and

- 4) the taxpayer reasonably relied on the advice [N.J.S.A. 54:49-11].

1-21 PENALTIES ON DELINQUENT TAXES

Civil penalties are provided as follows:

- 1) Late filing—\$100 per month plus five percent of deficiency per month, up to 25 percent maximum [N.J.S.A. 54:49-4]. For Gross Income Tax, penalty is assessed based on the outstanding tax balance.
- 2) Late payment—five percent of outstanding balance [N.J.S.A. 54:49-4].
- 3) Unless any part of any underpayment of tax required to be shown on a return or report is shown to be due to reasonable cause, there shall be added to the tax an amount equal to five percent of the underpayment [N.J.S.A. 54:49-4]. If any part of a deficiency is due to negligence or intentional disregard of the law (but without intent to defraud), there shall be added to the tax an amount equal to 10 percent of the deficiency [N.J.S.A. 54A:9-6(b)].
- 4) Fraud—50 percent of assessment [N.J.S.A. 54:49-9.1]; additional \$5,000 under Gross Income Tax [N.J.S.A. 54A:9-6(i)].
- 5) Failure to file declaration or underpayment of estimated tax. See N.J.S.A. 54A:9-6(c) for more details.
- 6) Failure to provide tax preparer ID number—\$25 per failure [N.J.S.A. 54:50-20].
- 7) Cost of collection—[N.J.S.A. 54:49-12.1].
 - a) If judgment is entered, in lieu of actual cost of collection, the fee is greater of five percent of tax or \$100.
 - b) If certificate of debts is entered, in lieu of actual cost of collection, the fee is greater of 10 percent of tax or \$200.

- c) If suit is instituted, in lieu of actual cost of collection, the fee is greater of 20 percent of tax or \$500.

From April 15, 2002 until June 10, 2002, New Jersey had a Tax Amnesty Program for state liabilities for tax returns due on and after January 1, 1996, and prior to January 1, 2002. After June 10, 2002, an unabatable five percent penalty will be imposed and an additional collection fee may also be imposed for any liability that was amnesty eligible. This is in addition to all other penalties, interest and other costs [N.J.S.A. 54:53-18].

1-22 CRIMINAL PENALTIES

Criminal penalties which require intent to defraud the state or evade the tax are provided for as follows:

- 1) Providing false return or false information—crime of the fourth degree [N.J.S.A. 54:52-7].
- 2) Failure to file a return—crime of the third degree [N.J.S.A. 54:52-8].
- 3) Failure to pay or turn over taxes—crime of the third degree [N.J.S.A. 54:52-9].
- 4) Filing or preparing false or fraudulent return or assisting in filing or preparing false or fraudulent return—crime of the third degree [N.J.S.A. 54:52-10].
- 5) Maintaining or preparing false or fraudulent books or records—crime of the third degree [N.J.S.A. 54:52-11].
- 6) Failure to maintain required books and records—crime of the third degree [N.J.S.A. 54:52-12].
- 7) Failure to be registered—crime of the fourth degree [N.J.S.A. 54:52-13].
- 8) Failure to collect or withhold tax—crime of the third degree [N.J.S.A. 54:52-14].
- 9) Failure to turn over withheld or collected taxes [N.J.S.A. 54:52-15].

- a) If the amount is less than \$75,000, crime of the third degree.
 - b) If the amount is \$75,000 or more, crime of the second degree.
- 10) Knowing operation under a voided corporate charter—crime of the fourth degree [N.J.S.A. 54:52-16].
- 11) Knowing verification of false or fraudulent statement; false testimony at hearing—crime of the fourth degree [N.J.S.A. 54:52-19].

1-23 WAIVER OF PENALTIES

The Director of the Division of Taxation may remit or waive penalties in whole or in part if the failure to make timely payment of certain deficiency assessment is satisfactorily explained.

He or she may also remit or waive the payment of any interest charge in excess of the rate of three percentage points above the prime rate, as effective July 1, 1993. A taxpayer should articulate in a written statement the factual and legal basis for requesting the penalty abatement. Regulations adopt a “reasonable cause” standard for abatement [N.J.A.C. 18:2-2.7].

The New Jersey Tax Court had jurisdiction to review the determination of the Director not to waive a penalty and interest. The determination of the Director, however, should not be overruled unless manifestly corrupt, arbitrary or misleading. *Media Graphics Inc. v. Director, Division of Taxation*, 7 N.J. Tax 23 (Tax 1984), *aff'd*, 8 N.J. Tax 321 (N.J. Super. Ct. App. Div. 1996).

1-24 CERTIFICATE OF DEBT

As an additional remedy for the collection of tax, the Director of the Division of Taxation may issue a certificate of debt to the Clerk of the Superior Court. The clerk then docket the certificate as if it were a judgment, and the Director may proceed on the certificate as if it were a judgment [N.J.S.A. 54:49-12].

1-25 DAMAGE ACTIONS

If an employee of the Division of Taxation knowingly disregards any tax law, administration provision or regulation in the collection

of any tax, or knowingly, recklessly or negligently fails to release a lien against or bond on a taxpayer's property, then the taxpayer may, within two years from the date that the taxpayer could reasonably discover the actions of the employee or Director, bring an action for damages against the state in the Tax Court.

The damages must be limited to the actual direct economic damages suffered by the taxpayer as a proximate result of the actions of the employee or Director, plus costs, reduced by the amount of such damages and costs as could reasonably have been mitigated by the taxpayer. This civil action will be the exclusive remedy for recovering damages resulting from such actions [N.J.S.A. 54:51A-23].

