

SUBCHAPTER [5.] 7. AUDIT, RECORDKEEPING, AND
[INSPECTION] **RECORD RETENTION**

16:56-[5.1]7.1 Audit requirements

(a) A recipient of [financial assistance] a **grant or loan** under this chapter shall comply with the State of New Jersey single audit policy for recipients of Federal grants, State grants, and State aid defined by the Department of the Treasury, Office of Management and Budget and the Single Audit Act of 1984 (Federal OMB Circular A-133), incorporated herein by reference, as amended and supplemented. Copies of these circulars can be obtained from the New Jersey Department of the Treasury, Office of Management and Budget at www.state.nj.us/infobank/circular/circindex.htm and www.whitehouse.gov/OMB or by mail from:

[N.J.] New Jersey Department of Treasury
Office of Management & Budget
PO Box 221
Trenton, NJ 08625-0221

(b)-(c) (No change.)

16:56-[5.2]7.2 Recordkeeping requirements

(a) A recipient shall keep records as the Department may prescribe, including records that disclose the amount and the disposition of the [financial assistance] **grant or loan**, the total cost of the project or program, and the amount and nature of that portion of the cost of the project or program paid from sources other than [financial assistance] **the grant or loan**, and records as will facilitate an effective audit.

(b)-(e) (No change.)

16:56-[5.3]7.3 Retention of records

(a) [A] **As stated in the agreement**, a recipient shall obtain and retain[,] **all project-related records** for a period of [three years] **the useful life of the project plus one year**, after the [date the recipient submits to the Department the] **submission of the recipient's** [single or last expenditure report for that funding period,] **final invoice. Such records include, but are not limited to**, documentary evidence such as invoices, cost estimates, appraisal reports, and negotiation documents relating to each item of project or program cost. These documents typically include, but are not limited to:; vendor's invoices, applicable purchase orders, receiving reports, inventory records, method of pricing, returns, production cost reports, weight tickets, physical inventories, production cost accounts, final inspection report showing acceptance of the airport development performed under the project or program, and a record of disposition or correction of all unsatisfactory work, if any.

(b) A recipient shall retain, for a period of three years after the recipient submits to the Department the recipient's single or last expenditure report for that funding period, evidence of all payments for items of project or program costs including vouchers, cancelled checks or warrants, and receipts for cash payments.]

(c) (b) (No change in text.)

SUBCHAPTER 8. LIABILITY AND PENALTIES

16:56-[5.6]8.1 Liability [and penalties]

(a) Any failure by a recipient to meet the conditions or performance criteria or obligations under an agreement may result in the withdrawal of [financial assistance] **the grant or loan**, disqualification from current or future consideration for financial assistance, or the declaration that a recipient is in default of the terms of an agreement.

16:56-8.2 Penalties

Recodify existing (b) and (c) as (a) and (b) (No change in text).

[SUBCHAPTER 6. FUELS

16:56-6.1 Aircraft and turbine fuels

(a) Under the taxation purposes of the Airport Safety Act of 1983, P.L. 1983 c. 264, (N.J.S.A. 6:1-89 et seq.) approved July 11, 1983, it is hereby determined that "aircraft" and "turbine fuels" are fuels distributed to general aviation airports for the purpose of propulsion of aircraft through the air including, without limitation thereto, fuels known or sold as:

1. Grade 80 gasoline (Red);

2. Grade 100 gasoline (Green);
3. Grade 100 LL Gasoline (Low Lead) (Blue);
4. Grade 115 gasoline;
5. Jet A—kerosene, freeze point -40 degrees Celsius;
6. Jet A-1—kerosene, with icing inhibitor, freeze point -50 degrees Celsius;
7. Jet B—Wide-cut turbine fuel, freeze point -50 degrees Celsius; and
8. Jet B—Wide-cut turbine fuel with icing inhibitor, freeze point -50 degrees Celsius.]

TREASURY — TAXATION

(a)

DIVISION OF TAXATION

Conferences and Appeals

Proposed Readoption with Amendments: N.J.A.C. 18:32

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

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

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

Proposal Number: PRN 2013-135.

Submit comments by December 6, 2013 to:

Mitchell Smith
Administrative Practice Officer
Division of Taxation
PO Box 269
Trenton, NJ 08695-0269

The agency proposal follows:

Summary

Pursuant to N.J.S.A. 52:14B-5.1.b, N.J.A.C. 18:32 expires August 21, 2013. As the Division has filed this notice of proposal prior to that date, the expiration of this chapter is extended 180 days to February 17, 2014, 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.

N.J.A.C. 18:32-1.1 advises taxpayers of the existence of a Conference and Appeals Branch within the Division, and of the rules taxpayers must follow in order to file a written protest of a finding or assessment of the Director. This section is amended to remove a statement that says the 90-day deadline to appeal to the Tax Court cannot be relaxed. The rules governing appeals to the Tax Court of New Jersey are found in the New Jersey Court Rules, not the rules of the Division of Taxation.

N.J.A.C. 18:32-1.2 provides the information that is required to be included in a written protest, such as a statement of the grounds on which the protest is based. This section is amended to remove the requirement that the protest be filed under oath. This section is further amended to allow the taxpayer to directly sign the written protest, in addition to allowing the taxpayer's duly authorized officer or representative.

N.J.A.C. 18:32-1.3 describes the circumstances in which the Division will proceed with collection activities, and the circumstances in which a taxpayer will be required to provide security while a finding or assessment is being protested. Subsection (a) is amended to delete the statement that the filing of any protest shall not abate penalties and interest for nonpayment. This statement is not required because the criteria for abatements of penalty and interest are described in a different rule at N.J.A.C. 18:2-2.7. A clause is added clarifying that a protest may be made provided that it is filed timely, pursuant to N.J.A.C. 18:32-1.1. Subparagraphs (a)3ii and 4i are amended to replace "the payment of the tax in issue" with "the payment of the tax at issue."

N.J.A.C. 18:32-1.4 provides that hearings are scheduled on a mutually acceptable date for the taxpayer and/or the taxpayer's representative and the Division and are held via telephone whenever possible. It also provides information regarding cancellations.

N.J.A.C. 18:32-1.5 provides that a taxpayer may have an attorney or accountant present at a conference if the taxpayer files an Appointment of Taxpayer Representative (Form M-5008-R).

N.J.A.C. 18:32-1.6 provides that taxpayers may record conferences with Division of Taxation representatives with their own equipment or purchase a copy of a Division recording of the conference for \$10.00.

N.J.A.C. 18:32-1.7 provides the addresses for filing a protest of Transfer Inheritance Tax or Railroad Tax. The name of the Income Tax Branch is updated to the Individual Tax Audit Branch.

As the Division has provided a 60-day comment period for 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 rules proposed for readoption with amendments will have a positive social impact in that they inform taxpayers and taxpayers' representatives as to what documents, information, and payments must accompany a protest and request for hearing. By letting taxpayers know what they need to submit, the Division can spend less time requesting missing documents and information from taxpayers and can spend more time holding administrative hearings.

Economic Impact

The rules proposed for readoption with amendments establish requirements and procedures that taxpayers must follow when submitting a protest to the Division. As a result, the Division will save administrative costs because it will spend less time requesting missing documents and information from taxpayers. This may also reduce costs to taxpayers because they will know what they need to submit and should not need to respond to multiple requests for information from the Division.

The rules proposed for readoption with amendments are intended to protect State revenues through the establishment of procedures for taxpayer appeals and other taxpayer contacts with the Division. Since the rules request that uncontested amounts of tax, penalty, and interest accompany the protest and request for hearing, there may be some acceleration of revenue to the State through more speedy receipt of uncontested amounts. Orderly presentation of the information requested should result in the State saving some costs of administrative processing. The rules could also save expense to taxpayers by informing them of the documents, information, and payments that are to accompany the protest and request for hearing. There are no required costs to taxpayers associated with the rules. There is a fee of \$10.00, if a taxpayer wishes to voluntarily obtain a copy of a Division recording of a conference between a Division employee and the taxpayer. The cost of obtaining professional assistance (that is, attorneys, accountants, etc.) or recording a conference would be incurred only if the taxpayer chooses on his or her own initiative to file a protest.

Federal Standards Statement

A Federal standards analysis is not required because the rules proposed for readoption with amendments do not exceed Federal standards or requirements. There are no Federal standards or requirements applicable to the subject matter of the rules proposed for readoption with amendments.

Jobs Impact

The rules proposed for readoption with amendments will have no impact on jobs in New Jersey. The Division does not anticipate an increase or decrease in jobs as a result of the rules proposed for readoption with amendments.

Agriculture Industry Impact

The rules proposed for readoption with amendments will not have an impact on the agriculture industry.

Regulatory Flexibility Analysis

The rules proposed for readoption with amendments apply to all taxpayers, some of which may be small businesses as the term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The source of the compliance requirements for the rules, which are applicable to all taxpayers, is the State Uniform Tax Procedure Law, N.J.S.A. 54:48-1 et seq. Therefore, no differentiation based on business size has been provided in the rules. There are no recordkeeping requirements under the

rules proposed for readoption with amendments, but there are reporting requirements, which are discussed in the Summary above.

Small businesses and other taxpayers may wish to retain the services of accounting or legal professionals to review the rules to determine if they are relevant to their own tax situation. However, the costs for professional services to interpret the rules should ultimately be reduced as the rules are intended to reduce the difficulty of complying with Division procedures. As noted in the Economic Impact above, any costs associated with complying with the rules, such as the fee to obtain a recording of a conference, would be incurred only if the taxpayer decided to pursue an appeal of a tax assessment.

Housing Affordability Impact Analysis

The rules proposed for readoption with amendments will not result in a change in the average costs associated with housing. The rules proposed for readoption with amendments will have no impact on any aspect of housing because they deal with procedures of the Conference and Appeals Branch of the Division of Taxation.

Smart Growth Development Impact Analysis

The rules proposed for readoption with amendments will 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 rules proposed for readoption do not concern housing production, either within Planning Area 1 or 2, within designated centers, or anywhere in the State of New Jersey. The rules proposed for readoption with amendments deal with procedures of the Division of Taxation, Conference and Appeals Branch.

Full text of the rules proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 18:32.

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

SUBCHAPTER 1. CONFERENCES AND APPEALS

18:32-1.1 Conference and Appeals Branch

[A] **The** Conference and Appeals Branch within the Division of Taxation [exists in accordance with N.J.S.A. 54:49-18 to] conducts administrative hearings and reviews of findings or assessments of the Director **in accordance with N.J.S.A. 54:49-18**. A protest, and a request for hearing, if any, by a taxpayer [to the Conference and Appeals Branch] must be made **to the Conference and Appeals Branch** within the time mandated by the appropriate taxing statute[, if any]. Unless the appropriate taxing statute provides for a different period within which a protest must be filed, a protest, and a request for hearing, if any, must be made, pursuant to N.J.S.A. 54:49-18, within 90 days of the giving of the notice of **assessment** or the [action] **finding** of the Director sought to be reviewed. In the case of a petition for a redetermination **of a deficiency** under the Gross Income Tax Act, the taxpayer may file a petition within 90 days after the mailing of the notice (or 150 days if the notice is addressed to a person outside of the United States) pursuant to N.J.S.A. 54A:9-9(b). The administrative hearing or protest review results in a Final Determination, which confirms, modifies, or vacates the finding or assessment under review. The Final Determination is then subject to judicial review in the New Jersey Tax Court within 90 days of the date of issuance pursuant to N.J.S.A. 54:51A-14 and 54A:9-10. [The 90-day period for appeals to the Tax Court cannot be relaxed.]

18:32-1.2 Written protest

(a) Upon the timely filing of a protest and a request for hearing pursuant to N.J.A.C. 18:32-1.1, the hearing process shall be commenced with the submission of a written protest statement as defined by this section and a request for a hearing, if a hearing is desired. A written protest shall be signed by the **taxpayer**, the taxpayer's duly authorized officer, or duly authorized representative, [under oath,] and shall contain the following documents, information, and payments:

1.-8. (No change.)

18:32-1.3 Security

(a) [Appeals] **Protests** to the Conference and Appeals Branch may be made before or after payment **provided the protest is otherwise timely**

pursuant to N.J.A.C. 18:32-1.1. [The filing of any protest shall not abate penalties and interest for nonpayment. (For criteria for abatements of penalty and interest, see N.J.A.C.18:2-2.7.)]

1.-2. (No change.)

3. The following concern collection of taxes after a complaint challenging a finding or assessment has been filed with the Tax Court:

i. (No change.)

ii. Except in the case of arbitrary or estimated assessments made pursuant to N.J.S.A. 54:49-5 or 7, the Director shall stay all activity to collect the tax [in] at issue upon the filing of a complaint with the Tax Court where no security is required pursuant to (a)4i or ii below or where, pursuant to (a)4ii below, the Director has notified the taxpayer that such security is required and such security has actually been furnished to the Director.

iii. (No change.)

4. The following concern security for tax after a complaint challenging a finding or assessment has been filed with the Tax Court:

i. Security shall be required in the case of any liability consisting in whole or in part of arbitrary or estimated assessments made pursuant to N.J.S.A. 54:49-5 or 7. The required security shall be in a form satisfactory to the Director and in an amount that, in the discretion of the Director, is sufficient to insure the payment of the tax [in] at issue in the event that the finding or assessment is upheld. The Director shall, upon the request of the taxpayer, inform the taxpayer of the form and amount of security required.

ii.-iii. (No change.)

5. (No change.)

18:32-1.4 Hearings

Hearings are scheduled [whenever possible by telephone] on a [mutually acceptable] date **that is mutually acceptable** for [both] the taxpayer **and/or the taxpayer's** representative, and the conferee, who represents] **representing** the Division. [Cancellations are discouraged except in cases that make attendance] **Whenever possible, hearings may be held via telephone. Requests for cancellations should be limited to situations where failure to attend is unavoidable.** In the event that a [cancellation] **hearing** must be [granted] **cancelled**, the hearing will be rescheduled on the [Conference and Appeals Branch's soonest] **next** available date **that is mutually acceptable to the taxpayer and/or the taxpayer's representative, and the conferee.** A Final Determination based on facts documented in the file may be issued if the taxpayer fails to appear at a scheduled [conference] **hearing.**

18:32-1.7 Transfer inheritance tax; railroad tax

Transfer inheritance and estate tax hearings are held pursuant to N.J.A.C. 18:26-12.5 through 12.10 and may be scheduled by contacting the [Income] **Individual Tax Audit** Branch, 50 Barrack Street, P.O. Box 269, Trenton, NJ 08695-0269. Railroad tax hearings are held pursuant to N.J.A.C. 18:23-11.2 and 11.3 and may be scheduled by contacting Property Administration, 50 Barrack Street, P.O. Box 269, Trenton, NJ 08695-0269.

OTHER AGENCIES

(a)

PUBLIC EMPLOYMENT RELATIONS COMMISSION

Subpoenas

Proposed Readoption: N.J.A.C. 19:15

Authorized By: Public Employment Relations Commission, P. Kelly Hatfield, Chair.

Authority: N.J.S.A. 34:13A-5.4.c and d, 34:13A-6(e), and 34:13A-11.

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

Proposal Number: PRN 2013-143.

Submit comments by December 6, 2013 to:

P. Kelly Hatfield, Chair

Public Employment Relations Commission
PO Box 429
Trenton, New Jersey 08625-0429

Comments may also be submitted by facsimile to 609-777-0089, or by electronic mail to: mail@perc.nj.us.

The agency proposal follows:

Summary

In accordance with the "sunset" and other provisions of N.J.S.A. 52:14B-5.1, the Public Employment Relations Commission (Commission) proposes to readopt N.J.A.C. 19:15. These rules apply to subpoenas to secure the testimony of witnesses and/or the production of documents in proceedings before the Commission involving all areas of its jurisdiction. See *Newark Bd. of Ed. and Newark Teach. Union, Local No. 481, AFT*, 152 N.J. Super. 51 (App. Div. 1977). The rules describe: the procedures for applying for and issuing subpoenas; the consequences for failing to comply with a subpoena; witness fees; and when and how to file a petition to quash a subpoena. Pursuant to N.J.S.A. 52:14B-5.1.c(2), N.J.A.C. 19:15 expires on March 27, 2014.

The rules have worked well and enabled smooth processing of Commission cases for several years so no amendments are proposed. A summary of each section in N.J.A.C. 19:15 follows:

N.J.A.C. 19:15-1.1 provides that the Commission, or any designated officer of the Commission, may issue subpoenas.

N.J.A.C. 19:15-1.2 provides that a party may file a written application for a subpoena, without naming or providing notice of the witness or the books, papers or other materials sought. The rule further provides that the Commission or designated officer shall furnish all subpoenas requested, but that the party requesting the subpoenas shall be responsible for serving them.

N.J.A.C. 19:15-1.3 provides that no person served with a subpoena shall refuse to comply with its terms without first having timely filed a petition to quash. The rule reflects court practice that an application to enforce a subpoena may be made by the Commission or the party requesting it.

N.J.A.C. 19:15-1.4 provides that witness fees for attendance and travel shall be paid by the Commission for witnesses that it has decided to subpoena and that witness fees for attendance and travel shall be paid by the party requesting the subpoena.

N.J.A.C. 19:15-2.1 provides that a petition to quash a subpoena may be filed within five days of service of the subpoena and that the Commission or its designated officer shall give notice of the filing of a petition to quash. The rule allows a party to file an answer to the petition within five days after being notified of the petition to quash, but does not permit further replies or responses without leave of the Commission or the designated officer.

N.J.A.C. 19:15-2.2 provides that a subpoena may be quashed because: it does not reasonably relate to the case; it does not adequately describe the evidence sought; or the evidence sought from the witness is privileged. The Commission or officer shall state the basis of the ruling on the petition to quash.

N.J.A.C. 19:15-2.3 provides that the failure to file a timely petition to quash bars a later filing of a petition to quash.

N.J.A.C. 19:15-2.4 provides that the aggrieved party may request that the petition to quash, any answers, and the ruling be made part of the record.

As the Commission has provided a 60-day comment period on this notice of proposal, this notice is excepted from the rulemaking calendar requirement set by N.J.A.C. 1:30-3.3(a)5.

Social Impact

The New Jersey Employer Employee Relations Act, N.J.S.A. 34:13A-1 et seq., at N.J.S.A. 34:13A-2 declares that it is the public policy of this State that the best interests of the people of the State are served by the prevention or prompt settlement of labor disputes. The Act gives the Commission jurisdiction to determine questions concerning the representation of public employees; hear and resolve unfair practice charges; rule upon disputes concerning the scope of collective negotiations in public employment; determine whether challenges to the withholding of a teaching staff member's salary increment can be