candidate to be elected must receive a majority of the total votes cast by
the seated delegates or their alternates to be elected. In the event no
candidate receives a majority, the candidate who has received the least
number of votes shall be eliminated. This procedure shall be repeated on
each succeeding ballot until one candidate has received a majority of the
total vote.
(p) The trustee must be employed in or retired from a county in Group
A, Group B or Group C. Members elected shall serve three-year terms. In
the event an active or retired trustee elected by the membership is unable
to finish the term, the vacancy shall be filled in the same manner and in
the same group as the departing trustee, as set forth in N.J.S.A. 18:66-
56. The term of this position shall be the remainder of the unexpired
term.
(q) Only delegates with proper identification will be admitted to [the
main floor of] the convention.
(r) [Alternates] Delegates, alternates and visitors shall be seated in a
specified area.
(s) The secretary of the convention will conduct a roll call of the
delegates. Alternates will be seated in the place of respective county
absentee delegates in the order in which they are listed by the secretary
of the county meeting[.] [1. The election of the member-trustee shall require a majority vote
among the delegates actually seated in the convention.]
(t)-(w) (No change.)

TREASURY — TAXATION

DIVISION OF TAXATION
Organization of the Division of Taxation
Relaxation of Rules


Authorized By: Michael Bryan, Acting Director, Division of
Taxation.
Calendar Reference: See Summary below for explanation of
exception to calendar requirement.
Proposal Number: PRN 2011-039.
Submit comments by April 8, 2011 to:
Mitchell Smith
Assistant Chief, Regulatory Services Branch
Division of Taxation
50 Barrack St
PO Box 269
Trenton, NJ 08695-0269

The agency proposal follows:

Summary

Proposed new N.J.A.C. 18:1-2.6 offers a procedure to allow for the
relaxation, in certain instances, of the requirements of Division of
Taxation regulations. Proposed subsection (a) provides that the Director
of the Division of Taxation may, in his or her discretion, and if consistent
with taxation laws, relax the strict application of any administrative or
procedural requirements of Title 18 of the New Jersey Administrative
Code when necessary and in the public interest, upon a showing of undue
hardship, if the upon a finding that strict adherence to such requirements
would result in unfairness or injustice, and that the granting of a waiver is
consistent with the purposes and objectives of the applicable sections of
Title 54 of the New Jersey Statutes Annotated, or with the core objectives
of the Division. Proposed subsection (b) provides that the Director of the
Division of Taxation shall not relax any administrative or procedural
requirements if such requirements are imposed by applicable State or
Federal statutes, or by applicable decision, or decree of a court of
competent jurisdiction. Proposed subsection (c) provides that a request
for a waiver must be submitted in writing to the Director and shall
include a statement of the type and degree of hardship that would occur if
a waiver is not granted and supporting documentation.

Because 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).

Social Impact

Pursuant to Executive Order No. 2 (2010), paragraph c., State agencies
have been called upon to adopt procedures to allow strict compliance
waivers. Specifically, agencies are to prepare and publish policies
describing the circumstances under which waivers from strict compliance
with agency rules would be granted. This policy, as explained in the
Executive Order, is intended to recognize that “rules can be conflicting or
unduly burdensome.” The proposed new rule will comply with this
request by allowing for a waiver, or “relaxation,” of a rule, provided that
granting a waiver would not conflict with State or Federal statutes or
court decrees or the core mission of the Division. The intent of the
proposed new rule is to contribute to improving the business climate
while at the same time improving compliance with tax procedures in
general.

Economic Impact

The proposed new rule is not anticipated to have an immediate specific
economic impact. However, the proposed new rule to adopt a procedure
for relaxation of rules is derived from Governor Christie’s Administration
“Common Sense Principles” as specified in Executive Order No. 2
(2010). As explained in Executive Order No. 2 (2010), the Common
Sense Principles are intended to create “an environment that is an
attractive venue for entities doing, or seeking to do, business in the
State.” At the same time, the Executive Order suggests that any relaxation
of rules should not conflict with the core mission of the agency. Since the
core mission of the Division of Taxation is to collect taxes properly
owing to the State, the Division anticipates that the proposed new rule
would apply only in rare instances, as specified in the proposed new rule,
where tax collections would not be jeopardized.

Federal Standards Statement

The proposed new rule does not contain any requirement that exceeds
those imposed by Federal law. The proposed new rule represents an
administrative policy of the Division of Taxation that is not subject to any
Federal regulatory requirements or standards.

Jobs Impact

The proposed new rule is not expected to have any effect on jobs in
the State.

Agriculture Industry Impact

The proposed new rule will have no impact on the agriculture industry
in New Jersey.

Regulatory Flexibility Statement

The proposed new rule will apply to small businesses, as defined
under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., as well
as to businesses employing more than 100 people full-time. However,
the proposed new rule does not impose any new reporting, recordkeeping
or other compliance requirements on small businesses. To the contrary,
the proposed new rule provides a mechanism to relieve taxpayers in some
instances from regulatory tax compliance requirements. Taxpayers will
not require professional services to comply with the proposed new rule;
however, taxpayers may wish to utilize professional services to ascertain
whether the proposed new rule would be relevant to their own situation.

Smart Growth Impact

The Division anticipates that the proposed new rule will have no
impact on smart growth in New Jersey or on the implementation of the
New Jersey State Development and Redevelopment Plan.

Housing Affordability Impact

The proposed new rule would not result in a change in the average
costs associated with housing. The proposed new rule would have no
impact on any aspect of housing because the proposed new rule deals
with the relaxation of Division of Taxation rules.

(CITE 43 N.J.R. 276)
Smart Growth Development Impact

The proposed new rule 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. This is because the proposed new rule has nothing to do with housing production, either within Planning Areas 1 or 2, within designated centers, or anywhere in the State of New Jersey. The new rule deals with the relaxation of Division of Taxation rules.

Full text of the proposed new rule follows:

18:1-2.6 Relaxation of rules
(a) The Director of the Division of Taxation may, in his or her discretion, and if consistent with taxation laws, relax the strict application of any administrative or procedural requirements of Title 18 of the New Jersey Administrative Code when necessary and in the public interest, upon a showing of undue hardship, upon a finding that strict adherence to such requirements would result in unfairness or injustice and that the granting of a waiver is not inconsistent with the purposes and objectives of the applicable sections of Title 54 of the New Jersey Statutes Annotated, or with the core missions of the Division.
(b) The Director of the Division of Taxation shall not relax any administrative or procedural requirements if such requirements are imposed by applicable State or Federal statutes or by applicable decision or decree of a court of competent jurisdiction.
(c) A request for a waiver must be submitted in writing to the Director and shall include the following:
1. A statement of the type and degree of hardship that would occur if a waiver is not granted; and
2. All documentation that supports the applicant’s request for a waiver.

DIVISION OF TAXATION
Corporation Business Tax
Foreign Corporations Subject to Tax
Proposed Amendment: N.J.A.C. 18:7-1.8

Authorized By: Michael Bryan, Acting Director, Division of Taxation.
Calendar Reference: See Summary below for explanation of exception to calendar requirement.
Proposal Number: PRN 2011-038.
Submit written comments by April 8, 2011 to:
Mitchell C. Smith
Administrative Practice Officer
Division of Taxation
50 Barrack Street
P.O. Box 269
Trenton, NJ 08695
The agency proposal follows:

Summary

The Business Tax Reform Act, P.L. 2002, c. 40, enacted July 2, 2002 (BTRA) made numerous amendments and supplements to the Corporation Business Tax Act (Act). Those amendments made clear that the franchise tax is due from foreign corporations “for the privilege of deriving receipts from sources within this State, or for the privilege of engaging in contacts within this State.” This change applied to privilege periods and taxable years beginning on or after January 1, 2002.

The Division is proposing amendments to N.J.A.C. 18:7-1.8(a) to make explicit the responsibilities to file and pay tax for certain taxpayers receiving income from New Jersey sources after the law changed effective January 1, 2002. N.J.A.C. 18:7-1.8(a) is further amended to conform to N.J.S.A. 54:10A-2, by requiring that the taxpayer’s business activity in New Jersey is sufficient to allow the State to impose a tax under the U.S. Constitution and statutes. New subsection (b) is added to make clear that certain taxpayers performing services and domiciled outside the State that solicit business with the State or receive gross receipts from sources within the State must file a Corporation Business Tax return and pay the applicable tax to New Jersey.

As noted above the law change embodied in the proposed amendments is applicable for privilege periods beginning on and after January 1, 2002.

Because 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 social impact of these amendments is to draw clear attention to a specific application of the law changes that came about in 2002. The Business Tax Reform Act, P.L. 2002, c. 40, enacted July 2, 2002 made numerous amendments and supplements to the Corporation Business Tax Act. Important changes, contained in Section 1, amended N.J.S.A. 54:10A-2. Those amendments made clear that the franchise tax is due from foreign corporations “for the privilege of deriving receipts from sources within this State, or for the privilege of engaging in contacts within this State.” The amendments mandated that a taxpayer’s exercise of its franchise in this State is subject to taxation in this State if the taxpayer’s business activity in New Jersey is sufficient to give this State jurisdiction to impose the tax under the constitution and statutes of the United States. This change applied to privilege periods and taxable years beginning on or after January 1, 2002.

Accordingly, after the law changed effective January 2, 2002, corporations that derive receipts from sources within New Jersey or engage in contacts within New Jersey are subject to tax in New Jersey, provided that the taxpayer’s business activity in New Jersey is sufficient to give this State jurisdiction to impose the tax under the constitution and statutes of the United States.


Applying the principles of the statute as amended and the above-referenced court decisions, taxpayers performing services and domiciled outside the State that solicit business within the State or derive receipts from sources within the State must file a Corporation Business Tax return and pay the applicable tax to New Jersey. This principle applies to all corporations, including financial corporations. A financial business corporation, a banking corporation, a credit card company or similar business that has its commercial domicile in another state is subject to tax in this State if, during any year, it obtains or solicits business or receives gross receipts from sources within this State. As noted above, the...