

principles explained in the proposed amendments are applicable for privilege periods beginning on and after January 1, 2002.

The proposed amendments are published to provide the general public, corporate taxpayers and their advisers with information and guidance about their responsibilities under the Corporation Business Tax Act. By including an example of a particular situation creating tax subjectivity under the Corporation Business Tax Reform Act, the proposed amendments are intended to limit unnecessary confusion.

**Economic Impact**

The Business Tax Reform Act repealed the former New Jersey Corporation Income Tax law, N.J.S.A. 54:10E-1 et seq. and established new subjectivity and imposition standards under the Act. In the absence of precise data, it is not possible to quantify the economic impact of the proposed amendments on business activity in New Jersey.

The proposed amendments make plain the recordkeeping, return preparation, payment and filing responsibilities and requirements applicable to certain taxpayers located outside New Jersey. The guidance provided should enable taxpayers to have their returns prepared in an efficient and hence less costly manner. The proposed amendments may help to reduce the costs of tax administration of the Division and compliance costs to taxpayers since the guidance may limit the need for professional fees in certain cases. The economic impact is likely to be felt in the form of taxes paid to New Jersey by businesses outside the State that are deriving benefits from their connections with the State and their exploitation of the New Jersey marketplace. An economic benefit to the State Treasury should also occur in the form of increased revenue.

**Federal Standards Statement**

A Federal standards analysis is not required because there are no Federal standards or requirements applicable to the proposed amendments.

**Jobs Impact**

The proposed 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 proposed amendments.

**Agriculture Industry Impact**

The proposed amendments will not have an impact on the agriculture industry.

**Regulatory Flexibility Analysis**

The Division of Taxation, consistent with its mission, reviews its rule proposals with a view to minimizing the impact of its rules on small businesses to the extent possible. The mission of the Division of Taxation 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 within the taxing statutes is achieved without being an impediment to economic growth.

The proposed amendments apply to any company, including those which may be considered a small business as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. 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."

The proposed amendments apply to small businesses, as well as to businesses employing more than 100 people full-time. The Division anticipates that the proposed amendments will not increase capital costs of small businesses. However, there may be some additional costs or accountants' fees for professional services related to the need to file tax returns and the need to monitor the applicability of the proposed amendments to certain contemplated or actual transactions. No exemptions from, or differentiation in, these requirements on large or small businesses was provided, since to do so would not have been in compliance with the applicable statutes.

**Smart Growth Impact**

The Division of Taxation anticipates that the proposed amendments 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 amendments would not result in a change in the average costs associated with housing. The proposed amendments would have no impact on any aspect of housing because the proposed amendments deal with subjectivity of foreign corporations to the Corporation Business Tax.

**Smart Growth Development Impact**

The proposed amendments 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 amendments have 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 proposed amendments deal with subjectivity of foreign corporations to the Corporation Business Tax.

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

18:7-1.8 Foreign corporations subject to tax

(a) Qualifications for subject corporations. The tax is imposed on every foreign corporation subject to tax as described in N.J.A.C. 18:7-1.6, and includes every corporation [which] **that derives receipts from sources within New Jersey or engages in contacts within New Jersey** or does business, employs or owns capital or property[,] or maintains an office in New Jersey in a corporate or organized capacity, regardless of whether it has formally qualified or is authorized to do business 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.**

Example 1-3 (No change.)

**(b) 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.**

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

**(a)**

**DIVISION OF TAXATION**

**Luxury Tax**

**Proposed Readoption with Amendments: N.J.A.C. 18:25**

Authorized By: Michael Bryan, 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 2011-028.

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**

Pursuant to N.J.S.A. 52:14B-5.1c, N.J.A.C. 18:25 expires on July 23, 2011. The Division of Taxation has reviewed the rules and has determined them to be necessary, reasonable and proper for the purposes for which they were originally promulgated. The rules proposed for readoption are proposed with changes to take account of recent statutory increases in sales tax rates. The statutes setting forth the general powers of municipalities have, since 1947, authorized cities of the fourth class to enact ordinances to increase their revenue by levying and collecting taxes on certain retail sales. 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 of Taxation has had the duty and authority to administer the luxury tax. N.J.S.A. 54:32B-24.1. The luxury tax rules were first adopted in 1980. They were readopted in 1985, 1991, 1996, 2000 and again in 2005. Minor technical changes were made with the last readoption to reflect changes in form names and designations. The Division proposes to readopt all sections of Chapter 25. Subchapter 1 includes: scope of the chapter; definitions; a list of luxury tax forms; a provision specifying that Atlantic City imposes a luxury tax; and a provision setting forth the tax rates in Atlantic City for luxury tax alone, for combined sales tax and luxury tax, for sales tax alone and for the combined luxury tax and sales tax on the sale of alcoholic beverages by the drink. N.J.A.C. 18:25-1.5 is proposed to be amended to take account of increases in tax rates enacted in P.L. 2006, c. 44.

P.L. 2006, c. 44 increased the sales tax rate for sales that are specifically subject to both the Sales and Use Tax and the Atlantic City Luxury Tax, except for sales of alcoholic beverages, from three percent to four percent, so that the combined rate for those sales increased from 12 percent to 13 percent, which is the new four percent rate plus the existing nine percent luxury tax rate. N.J.A.C. 18:25-1.5(b) is proposed to be amended to take account of this increase in the rates. The rate in N.J.A.C. 18:25-1.5(c) is increased from six percent to seven percent, because the legislation also increased the Sales and Use Tax rate on sales subject to the Sales and Use Tax from six percent to seven percent. Finally, subsection (d) is amended to take account of the increase in the sales tax rate from six percent to seven percent, so that the combined rate is now 10 percent, the sum of the seven percent sales tax rate and the special three percent luxury tax rate on sales of alcoholic beverages.

Subchapter 2 clarifies that the luxury tax applies to the “rental of a room or rooms, with or without service, in hotels, motels, rooming houses, inns, boarding houses or private houses ...” as well as apartment rentals. This subchapter states the applicable rate on the rental of a room or rooms and apartments is nine percent. This subchapter also sets forth exemptions from luxury tax on certain rentals of rooms and apartments.

Because the Division has provided a 60-day comment period on this notice of proposal, this notice is exempted from the rulemaking calendar requirements pursuant to N.J.A.C. 1:30-3.3(a)5.

#### Social Impact

The rules affect businesses and consumers in Atlantic City, specifically, vendors and consumers of alcoholic drinks, rooms and apartments, entertainment and amusements and rolling chairs, beach chairs and cabanas.

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; and, since sources of revenue in municipalities, particularly in cities of this State bordering upon the Atlantic Ocean and being seaside and summer resorts, are inadequate and insufficient to meet existing municipal obligations. P.L. 1947, c. 71. The Act gives such cities the power to increase their revenues through a tax on certain retail sales and services. These rules are intended to provide guidance to consumers, vendors 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 clarify the application of the luxury tax to room and apartment rentals in Atlantic City. Rules are necessary because without these rules, vendors of rooms and apartments could have difficulty interpreting the extent of the statute’s application to the “hiring, with or without service, of any room in any hotel, inn, rooming or boarding house,” a category of transaction that is listed, without further explanation, among the “retail sales” covered by the Act at N.J.S.A. 40:48-8.16.

#### Economic Impact

In addition to the businesses and consumers in Atlantic City whose transactions are subject to the luxury tax, the rules economically affect the entire city of Atlantic City, which benefits economically from the luxury tax revenues.

The exemptions explained in N.J.A.C. 18:25-2.4 will continue to benefit long-term residents of Atlantic City, who were not intended to be taxed on their costs of renting a permanent residence.

#### Federal Standards Statement

The rules proposed for readoption with amendments do not contain any requirement that exceeds those imposed by Federal law. The rules represent an administrative policy of the Division of Taxation that is not subject to any Federal regulatory requirements or standards.

#### Jobs Impact

The rules proposed for readoption with amendments have not had in the past and are not expected to have any effect on jobs in the State.

#### Agriculture Industry Impact

The rules proposed for readoption with amendments will have no impact on entities within the agriculture industry as it applies only to transactions occurring within Atlantic City.

#### Regulatory Flexibility Analysis

The rules proposed for readoption with amendments 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 other compliance requirements in the Act 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. Therefore, no differential requirements based on business sizes have been established. Any exemption for small businesses would not appear to be in compliance with the statute. The rules proposed for readoption with amendments do not impose any new reporting, recordkeeping or other compliance requirements on small businesses.

#### Smart Growth Impact

The Division anticipates that the rules proposed for readoption with amendments 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 rules proposed for readoption with amendments would not result in a change in the average costs associated with housing. The rules proposed for readoption with amendments 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

The rules proposed for readoption with amendments 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 rules have 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 rules proposed for readoption with amendments only deal with certain retail sales subject to the luxury tax and applicable tax rates.

**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 follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

#### SUBCHAPTER 1. GENERAL PROVISIONS

##### 18:25-1.5 Tax rates

(a) (No change.)

(b) The combined rate for sales subject to both the Atlantic City luxury tax and New Jersey sales and use tax is [12] **13** percent (luxury tax at nine percent and sales tax at [three] **four** percent).

(c) Sales subject only to New Jersey sales and use tax are taxable at a rate of [six] **seven** percent.

(d) Sales of alcoholic beverages by the drink in Atlantic City are taxable at the combined rate of [nine] **10** percent (luxury tax at three percent and sales tax at [six] **seven** percent). Sales of package goods are

subject only to New Jersey sales and use tax at the rate of [six] **seven** percent.

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(a)

**DIVISION OF TAXATION**

**Spill Compensation and Control Tax**

**Proposed Readoption: N.J.A.C. 18:37**

Authorized By: Michael Bryan, 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 2011-032.

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**

Pursuant to N.J.S.A. 52:14B-5.1c, N.J.A.C. 18:37 expires on July 23, 2011. The Division of Taxation has reviewed these rules and has determined them to be necessary, reasonable, adequate, efficient and responsive for the purposes for which they were originally promulgated. The rules proposed for readoption are being advanced with no amendments as there have been no recent changes to the Spill Compensation and Control Act (N.J.S.A. 58:10-23.11 et seq.).

Tax liability under the Spill Compensation and Control Act (P.L. 1976, c. 141), effective, April 1, 1977, is incurred when hazardous substances are transferred to a major facility or vessel within the jurisdiction of the State of New Jersey, from another major facility located either inside or outside New Jersey. The tax burden falls upon the operator or owner of the receiving major facility or vessel, irrespective of the ownership of the hazardous substance transferred (except for transfers to certain major facilities designated as public storage terminals). Spill Compensation and Control Tax liability is limited to the first transferee of a hazardous substance (or any product derived therefrom) are exempt from tax liability if they are in receipt of a valid secondary transfer certificate from the transferor.

P.L. 2004, c. 50, provided for an increase in the applicable tax rates for the transfers of petroleum products, non-petroleum products, hazardous substances containing precious metals, elemental phosphorus and the elemental antimony or antimony trioxide for fire retardants. However, no change to the tax rates has been enacted since the last readoption of these rules.

Subchapter 1 deals with the imposition of the tax and Subchapter 2 contains the tax rates.

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 Spill Compensation and Control Act (P.L. 1976, c. 141, as amended) was enacted to protect the citizenry of New Jersey from the adverse effects of environmental mishaps that may result from spills of petroleum products or other hazardous substances in this State. To expedite the clean-up process and provide adequate compensation to victims when spills occur, the Legislature established a special fund within the Department of Environmental Protection, supported by the Spill Compensation and Control Tax. These rules are being readopted without amendment as there has been no recent legislation affecting this area of the law.

**Economic Impact**

The proceeds from the Spill Compensation and Control Tax constitute a fund, the New Jersey Spill Compensation Fund within the New Jersey Department of Environmental Protection, to insure compensation for cleanup costs and damages associated with the discharge of petroleum products and other hazardous substances in this State. The rules currently reflect the statutory tax rate increase that occurred due to the enactment of P.L. 2004, c. 50 on June 24, 2004. Those new tax rates of \$0.023 per barrel on petroleum, precious metals, phosphorus and qualified antimony transfers and 1.53 percent of the fair market value on transfers of hazardous substances other than the above, resulted in rather high tax rate increases, which may have had a significant economic impact for some petrochemical taxpayers at that time. Those changes were reflected in the rules when they were readopted with amendments five years ago, effective January 24, 2006.

**Federal Standards Statement**

A Federal standards analysis is not required because the rules proposed for readoption relate to a State-imposed tax on the transfer of petroleum products, non-petroleum hazardous substances and precious metals. The rules do not involve any Federal standards.

**Jobs Impact**

The rules proposed for readoption are not anticipated to have any effect on jobs in the State.

**Agricultural Industry Impact**

The rules proposed for readoption will have no impact on the agricultural industry.

**Regulatory Flexibility Analysis**

The rules proposed for readoption apply to small businesses in the petrochemical industry, 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. The imposition of the tax and other compliance requirements in the Act 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. Therefore, no differential requirements based on business sizes have been established. Any exemption for small businesses would not appear to be in compliance with the statute. However, the Spill Compensation and Control Act itself imposes the tax on owners or operators of "major facilities," which include petrochemical facilities in this State that store at least 200,000 gallons of petroleum products or 20,000 gallons of hazardous chemicals and does not impose the tax on businesses with lower product thresholds (that is, gas stations). It is not anticipated that any professional services will be required to comply with the rules proposed for readoption.

**Smart Growth Impact**

The Division of Taxation anticipates that the rules proposed for readoption 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 rules proposed for readoption would not result in a change in the average costs associated with housing. The rules would have no impact on any aspect of housing because the rules proposed for readoption deal with the Spill Compensation and Control Tax.

**Smart Growth Development Impact**

The rules proposed for readoption 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 rules have 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 rules only involve the Spill Compensation and Control Tax.

**Full text** of the rules proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 18:37.

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