

entities must be registered to operate a business, occupation, trade, or profession in this State.

“Taxes” means all reports, returns, documents, taxes, fees, penalties, interest, and costs required under any tax law of the State of New Jersey [which] **that** are required to be paid or remitted to or collectible by the Director.

18:2-10.3 Requirements for Tax Clearance Certificate

(a) The person or business entity applying for business assistance or incentive shall apply to the Director for a Tax Clearance Certificate and provide the information necessary for the Director to make a determination that the applicant is compliant with New Jersey tax laws and has satisfied all requirements for filing State tax and information returns, and for paying State taxes [for] which the applicant [has been] **is** liable **for** as a taxpayer or collector of tax.

(b) (No change.)

18:2-10.5 Interim Tax Clearance Certificate

(a) If the Director determines that the person or business entity has not filed all of the required tax and information returns or has not paid all tax, penalties, interest, or fees due, the Director shall issue a notice of delinquency or deficiency listing unfiled returns or balances due. The Director may require a person to resolve all delinquencies and deficiencies before a Tax Clearance Certificate is issued, or upon review of the total circumstances, the Director may issue an Interim Tax Clearance Certificate if it has been established to the satisfaction of the Director that the person or entity will resolve all such delinquencies or deficiencies within a specified time period.

1. The issuance of an Interim Tax Clearance Certificate is solely at the discretion of the Director based upon the receipt and confirmation of information that will allow the Director to determine that it is in the best economic interest of the State to [allow the applicant to be granted the assistance or incentive it is applying for] **issue the Interim Tax Clearance Certificate** prior to [receiving tax clearance so as not to impede economic commerce] **full payment of all tax delinquencies and deficiencies**.

2. Prior to an [interim certificate] **Interim Tax Clearance Certificate** being issued to an applicant who may have **outstanding** tax issues to resolve, the Director shall determine and demand a pre-payment of **those** tax liabilities to be held in escrow.

18:2-10.6 No waiver of authority to resolve tax matters

The issuance of a regular or an [interim] **Interim Tax Clearance Certificate** [shall] **does** not constitute a waiver of authority to demand resolution of all deficiencies and delinquencies and [shall] **will** not prevent further audit or the assessment of additional taxes, penalties, interest, fees, or costs as may be provided by law.

(a)

DIVISION OF TAXATION

Controlling Interest Transfer Tax

Proposed Redoption: N.J.A.C. 18:16A

Authorized By: Dennis Shilling, Acting Director, Division of Taxation.

Authority: N.J.S.A. 54:15C-1.e(4) and 54:50-1.

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

Proposal Number: PRN 2015-090.

Submit written comments by October 2, 2015, to:

Elizabeth J. Lipari
 Administrative Practice Officer
 Division of Taxation
 Director’s Office
 PO Box 240
 50 Barrack Street
 Trenton, NJ 08695-0240
 E-mail: tax_rulemakingcomments@treas.state.nj.us

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66 (1978) and N.J.S.A. 52:14B-5.1, N.J.A.C. 18:16A expires on July 7, 2015. Since this notice of proposed redoption has been filed with the Office of Administrative Law prior to July 7, 2015, the expiration date of this chapter is extended 180 days to January 3, 2016, pursuant to N.J.S.A. 52:14B-5.1.c(2). The Division of Taxation has reviewed these rules and has determined them to be necessary, reasonable, and proper for the purposes for which they are being proposed.

The rules proposed for redoption fulfill the statutory mandates of N.J.S.A. 54:15C-1. This statute imposes a controlling interest transfer tax of one percent on the transferee for certain transfers of controlling interest in entities possessing a controlling interest in Class 4A commercial property.

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 rules proposed for redoption will likely have a beneficial social impact because the rules provide the public, real estate owners, prospective controlling interest purchasers, and their advisers with information and guidance about purchaser’s responsibilities and liabilities, if any, under the controlling interest transfer tax law and clarify when the merger or acquisition exemption applies.

Economic Impact

The rules proposed for redoption would generally be revenue neutral since the rules clarify the application of the controlling interest transfer tax law, including when the merger or acquisition exemption applies. The controlling interest transfer tax imposes a tax on the purchaser in a non-deed transfer of a controlling interest in an entity that owns Class 4A commercial properties if the total consideration for the transfer is in excess of one million dollars or if the equalized assessed value of the class 4A commercial property in New Jersey is greater than one million dollars where there are other assets involved in the transfer. That tax is equal to one percent of the full amount paid for the transfer or one percent of the equalized assessed value of the Class 4A commercial property where there are other assets being transferred in addition to the Class 4A commercial property. The rules proposed for redoption will have a positive effect by clarifying the definitions and exemptions relating to the controlling interest transfer tax.

Jobs Impact

The rules proposed for redoption will have no impact upon jobs in the State.

Federal Standards Statement

A Federal standards analysis is not required because there are no Federal standards or requirements applicable to the rules proposed for redoption. The rules pertain solely to New Jersey law and policy.

Agriculture Industry Impact

The rules proposed for redoption will have no impact on the agriculture industry.

Regulatory Flexibility Statement

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

The rules proposed for redoption apply to any transferee of a controlling interest in entities possessing a controlling interest in Class 4A commercial property, including a transferee that may be considered a small business as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The Division has reviewed the application of the Regulatory Flexibility Act to the rules proposed for redoption and because the tax rules must be applied uniformly and equitably, the

Division is not able to develop and apply special rules for small businesses that would be different from the rules applied to all taxpayers.

The rules proposed for readoption apply to small businesses as well as to businesses employing more than 100 people full-time. The rules proposed for readoption contain recordkeeping and filing requirements for transfers of a controlling interest in an entity owning Class 4A commercial property. Purchasers must file Form CITT-1 and CITT-1E with the Division and provide a copy of the return to the seller and the entity from which the controlling interest was transferred. The purchaser, seller, and entity must keep a record of each transfer. The reporting, recordkeeping, and other compliance requirements in the law must be applied 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.

The Division anticipates that the rules proposed for readoption will not increase capital costs of small businesses, or require the services of professional advisors to comply with the rules; however taxpayers may want to consult with professional advisors to determine if the rules apply to their situation. No exemptions from, or differentiation in, these requirements on large or small businesses is provided, since to do so would not be in compliance with the applicable statutes.

Housing Affordability Impact Analysis

The rules proposed for readoption will not result in a change in the average costs associated with housing. The rules proposed for readoption have no impact on any aspect of housing because the rules only involve the collection of taxes on certain transfers of direct or indirect controlling interests in Class 4A commercial property located in New Jersey.

Smart Growth Development Impact Analysis

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. The rules proposed for readoption do not involve housing production, either within Planning Areas 1 or 2, within designated centers, or anywhere in the State of New Jersey. The rules involve the collection of taxes on certain transfers of direct or indirect interest in Class 4A commercial property located in New Jersey.

Full text of the rules proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 18:16A.
