

which includes tracking or other a proof of service with signature to each party, and provide ODS with the signed return receipt cards as proof of service.

(d) If no party rejects the award by sending a letter to ODS and paying the rejection fee within the 30-day period, the award shall become binding and be enforceable.

(e) If the arbitration award is rejected by any party, the parties shall be deemed to have met the statutory alternative dispute resolution requirement and any party may immediately file an action in Superior Court to pursue its damage claim.

17:39-4.7 Claims involving \$25,000 and above

(a) Parties to cases involving claims of \$25,000 and above may request arbitration through ODS.

(b) The rules in this subchapter shall apply to cases involving claims of \$25,000 and above, with the following exceptions:

1. The claimant is required to obtain the written consent of all parties to arbitration with ODS prior to making a request for arbitration. The letter requesting arbitration shall specifically note that the claimant has obtained the consent of all parties.

2. Fees are as follows:

- i. Filing fee paid by the claimant: \$100.00;
- ii. Arbitration fee paid by each party: \$250.00; and
- iii. Rejection fee paid by the party rejecting the award, if the award is \$25,000 or more: \$250.00; otherwise the fees set forth in N.J.A.C. 17:39-4.4(e) shall apply.

## TREASURY — TAXATION

### (a)

#### DIVISION OF TAXATION

#### Gross Income Tax

#### Gambling Winnings Subject to Withholding

#### Proposed Amendment: N.J.A.C. 18:35-7.6

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

Authority: N.J.S.A. 54:50-1, 54A:6-11, and 54A:7-1(c); and P.L. 2009, c. 69.

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

Proposal Number: PRN 2012-067.

Submit comments by June 15, 2012 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

The Division proposes to amend N.J.A.C. 18:35-7.6, Gambling winnings subject to withholding, in order to conform with statutory provisions set forth at N.J.S.A. 54A:6-11 and 54A:7-1(c), which were amended in 2009 by P.L. 2009, c. 69.

The New Jersey Gross Income Tax Act specifically excluded all New Jersey Lottery winnings from gross income in tax years prior to 2009. In 2009, the New Jersey Legislature passed P.L. 2009, c. 69, which amended the New Jersey Gross Income Tax Act at N.J.S.A. 54A:6-11 and 54A:7-1(c) to respectively provide that New Jersey lottery winnings for prizes exceeding \$10,000 are taxable, and require income tax withholding on such taxable prize amounts in taxable years beginning on or after January 1, 2009. New Jersey lottery winnings from prizes in the amount of \$10,000 or less are still excluded from New Jersey Gross Income Tax and no income tax withholding requirement is imposed.

N.J.A.C. 18:35-7.6(b) is amended to clarify that this section applies to the income tax withholding requirement; paragraph (b)1 is amended to provide that the income tax withholding requirement on New Jersey lottery winnings does not apply to prize amounts of \$10,000 or less as provided under N.J.S.A. 54A:6-11. Paragraph (d)1 is amended to delete New Jersey lottery winnings from the categories of gambling winnings subject to withholding. Paragraph (d)3 is amended to include New Jersey lottery winnings from a prize in an amount exceeding \$10,000, within the categories of gambling winnings subject to withholding, as provided under N.J.S.A. 54A:6-11.

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

New Jersey law previously excluded all New Jersey lottery winnings from Gross Income Tax because this exemption was believed to serve as an incentive to participate in the lottery. The proceeds from the sale of lottery products were generally to be used for the benefit of New Jersey education and institutions.

In 2009, P.L. 2009, c. 69 was passed to subject current and future payments from prizes exceeding \$10,000 to New Jersey Gross Income Tax and to require the withholding of income tax on these taxable prize amounts.

As the statutes and this rule are currently in conflict, the proposed amendment to the rule will update the rule for conformity and should eliminate any confusion on the part of winners of taxable New Jersey lottery winnings as to the intent of the New Jersey Legislature. The proposed amendment to this rule will clarify for the public that lottery winnings in excess of \$10,000 are subject to the Gross Income Tax and the State is required to withhold the tax from the winning prize.

#### Economic Impact

The Division anticipates that the proposed amendment will not have an economic impact on the lottery or on taxpayers, as the impact resulting from this withholding mandate began in 2009 pursuant to P.L. 2009, c. 69. The proposed amendment does not provide for any additional withholding requirements beyond the imposition of the tax on lottery winnings exceeding \$10,000 that was enacted by the State Legislature in P.L. 2009, c. 69. It is hoped that costs of compliance and administration may be reduced by eliminating a point of conflict between the rule and the applicable statutory authority.

#### Federal Standards Statement

The proposed amendment does not contain any requirement that exceeds those imposed by Federal law. The proposed amendment represents the law of the State of New Jersey that is not subject to any Federal regulatory requirements or standards.

#### Jobs Impact

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

#### Agriculture Industry Impact

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

#### Regulatory Flexibility Statement

The proposed amendment does not apply to small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., or to businesses employing more than 100 full-time employees. The proposed amendment only applies to individual taxpayers and not to businesses. The proposed amendment does not impose any new reporting, recordkeeping, or other compliance requirements on small businesses. The proposed amendment serves to notify the public that lottery winnings in excess of \$10,000 are subject to the Gross Income Tax, and therefore, the State of New Jersey will withhold the applicable tax when paying out lottery winnings. Therefore, a regulatory flexibility analysis is not required. Taxpayers will not require professional services to comply with the proposed amendments; however, taxpayers who have lottery winnings may wish to utilize professional services to ascertain whether the proposed amendments would be relevant to their own situation.

**Housing Affordability Impact Analysis**

The proposed amendment would not result in a change in the average costs associated with housing. The proposed amendment would have no impact on any aspect of housing because the proposed amendment deals with New Jersey lottery winnings subject to New Jersey Gross Income Tax withholding.

**Smart Growth Development Impact**

The proposed amendment 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 amendment has nothing to do with housing production, within Planning Areas 1 or 2, designated centers, or anywhere in the State of New Jersey. The proposed amendment deals with New Jersey lottery winnings subject to New Jersey Gross Income Tax withholding.

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

18:35-7.6 Gambling winnings subject to withholding  
(a) (No change.)

(b) The **income tax withholding requirement** imposed under N.J.S.A. 54A:7-1(c) and this section shall not apply:

1. With respect to the payment of winnings **on prize amounts** from the New Jersey Lottery **in amounts of \$10,000 or less that are excluded from gross income pursuant to N.J.S.A. 54A:6-11**; and

2. (No change.)

(c) (No change.)

(d) New Jersey gambling winnings subject to withholding means any payment from:

1. A wager placed in a sweepstakes, wagering pool, or lottery, [other than the New Jersey Lottery,] but only if the proceeds from the wager exceed \$1,000; or

2. (No change.)

**3. New Jersey Lottery winnings from a prize in an amount exceeding \$10,000 as provided under N.J.S.A. 54A:6-11.**

[3.] **4.** (No change in text.)

(e)-(f) (No change.)

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