

## CHAPTER 35

## NEW JERSEY GROSS INCOME TAX

## Authority

N.J.S.A. 54A:9-8.1 through 54A:9-8.3, 54A:9-17(a) and 54:50-1.

## Source and Effective Date

R.1993 d.315, effective June 4, 1993.  
See: 25 N.J.R. 1500(a), 25 N.J.R. 2906(b).

## Executive Order No. 66(1978) Expiration Date

Chapter 35, New Jersey Gross Income Tax, expires on June 4, 1998.

## Chapter Historical Note

All provisions of this chapter became effective prior to September 1, 1969.

1976 Revisions: Amendments became effective December 14, 1976 as R.1976 d.400. See: 9 N.J.R. 48(c). Further amendments became effective December 17, 1976 as R.1976 d.424. See: 9 N.J.R. 52(b).

1977 Revisions: Amendments became effective January 26, 1977 as R.1977 d.19. See: 9 N.J.R. 101(a). Further amendments became effective March 18, 1977 as R.1977 d.94. See: 9 N.J.R. 199(c). Further amendments became effective May 1, 1977 as R.1977 d.149. See: 9 N.J.R. 193(a), 9 N.J.R. 295(b). Further amendments became effective December 6, 1977 as R.1977 d.460. See: 10 N.J.R. 45(a).

1979 Revisions: Amendments became effective February 8, 1979 as R.1979 d.56. See: 11 N.J.R. 152(a). Further amendments became effective October 26, 1979 as R.1979 d.433. See: 11 N.J.R. 525(b), 11 N.J.R. 650(b). Further amendments became effective December 5, 1979 as R.1979 d.475. See: 11 N.J.R. 594(a), 12 N.J.R. 56(c).

1981 Revisions: Amendments became effective January 8, 1981 as R.1981 d.6. See: 12 N.J.R. 676(a), 13 N.J.R. 111(d).

1982 Revisions: Subchapter 2 became effective May 17, 1982 as R.1982 d.161. See: 13 N.J.R. 940(a), 14 N.J.R. 474(b).

1983 Revisions: Amendments became effective January 3, 1983 as R.1983 d.479. See: 14 N.J.R. 705(b), 15 N.J.R. 37(b). Further amendments became effective January 17, 1984 as R.1983 d.618. See: 15 N.J.R. 1566(a), 16 N.J.R. 149(a). This chapter was readopted pursuant to Executive Order 66(1978) effective August 12, 1983 as R.1983 d.353. See: 15 N.J.R. 1091(a), 15 N.J.R. 1488(c). Further amendments became effective November 16, 1987 as R.1987 d.476. See: 19 N.J.R. 1182(a), 19 N.J.R. 2201(c). Further amendments became effective December 19, 1983 as R.1983 d.586. See: 15 N.J.R. 1570(a), 15 N.J.R. 2175(c).

1984 Revisions: Amendments became effective March 19, 1984 as R.1984 d.62. See: 15 N.J.R. 2031(a), 16 N.J.R. 556(a). Further amendments became effective December 17, 1984 as R.1984 d.579. See: 16 N.J.R. 2760(b), 16 N.J.R. 3481(a).

1985 Revisions: Amendments became effective September 3, 1985 as R.1985 d.454. See: 17 N.J.R. 1643(a), 17 N.J.R. 2146(a).

1986 Revisions: Emergency Rule became effective April 15, 1986 (expires May 15, 1986) as R.1986 d.169. See: 18 N.J.R. 999(a).

1988 Revisions: This chapter was readopted pursuant to Executive Order No. 66(1978), effective June 7, 1988 with amendments effective July 5, 1988 as R.1988 d.299. See: 20 N.J.R. 514(a), 20 N.J.R. 1571(b). Amendments became effective September 6, 1988 as R.1988 d.407. See: 19 N.J.R. 2255(b), 20 N.J.R. 2310(c). Further amendments became effective September 6, 1988 as R.1988 d.419. See: 20 N.J.R. 515(a), 20 N.J.R. 2319(c).

Pursuant to Executive Order No. 66(1978), Chapter 35 was readopted as R.1993 d.315. See: Source and Effective Date. See, also, section annotations for specific rulemaking activity.

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## SUBCHAPTER 1. GENERAL PROVISIONS

**18:35-1.1 Summer payment plan**

(a) Certain deferred payments, authorized under a so-called "summer payment plan" under N.J.S.A. 18A:29-3, whereby an amount equal to ten percent of the employee's salary is withheld and paid to the participant in the plan at a later date are subject to tax under the New Jersey Gross Income Tax Law, P.L. 1976, c.47 (N.J.S.A. 54A:1-1 et seq.), at the time withheld and not at the time paid, provided that a similar treatment is given under the Internal Revenue Code and regulations thereunder for Federal income tax purposes.

(b) Section 54A:8-3 of the New Jersey Gross Income Tax Act, P.L. 1976, c.47 (N.J.S.A. 54A:8-3), provides that a taxpayer's accounting method under this Act shall be the same as his accounting method for Federal income tax purposes. Therefore, if for Federal income tax purposes an employee who participates in such a deferral plan is deemed to have received the salary at the time that the salary was withheld and placed into a deferred salary escrow fund, such income will also be deemed to have been received and subject to tax for New Jersey gross income tax purposes at that time. Such salary would not then be subject to New Jersey gross income tax when the employee receives a payment from the deferred salary escrow fund.

R.1976 d.415, effective December 16, 1976.  
See: 9 N.J.R. 52(a).

**18:35-1.2 Clergymen; self-employed; income; expenses**

Duly ordained clergymen are considered to be self-employed individuals for the purposes of the New Jersey Gross Income Tax Act. Accordingly, salaries, fees, honorariums, allowances and other remuneration paid to clergymen for services rendered are not subject to withholding. Therefore, income does not include the rental value of a residence provided for a clergyman by his church or congregation.

R.1976 d.424, effective December 17, 1976.  
See: 9 N.J.R. 52(b).

**18:35-1.3 Declaration of estimated tax; 1976**

(a) A declaration of estimated tax for 1976 must be made if your total New Jersey estimated tax is more than \$100. "Estimated tax" means the amount which an individual estimates to be his income tax for the taxable year less the amount which he estimates to be the sum of any credits allowable against the tax.

(b) In general, a declaration is not required to be filed if you expect that your 1976 tax return form NJ 1040, will show a tax refund, or a tax balance due to be paid to New Jersey of \$100 or less in excess of any credits.

(c) Calendar-year taxpayers should determine their expected gross income, deductions and credits upon the basis of the facts and circumstances existing at the time prescribed for filing the 1976 declaration as well as those reasonably to be anticipated for 1976. Use the worksheet as a guide for computing your estimated tax.

1. Calendar-year taxpayers should estimate their tax for the period July 1, 1976 to December 31, 1976. Exemptions and credits shall be one half of the full amount. The allowance for each personal exemption is \$500. The tenant's homestead credit is generally \$32.50 (\$50 for taxpayers 65 or over, permanently or totally disabled, or certain surviving spouses). Fiscal year taxpayers should estimate their tax from July 1, 1976, to the close of their fiscal year. Exemptions and credits shall be prorated accordingly.

(d) A declaration of estimated tax must be filed for 1976 on or before January 15, 1977. If a final return is filed on or before February 15, 1977, no declaration need be filed.

(e) A declaration of estimated tax shall be filed with the New Jersey Division of Taxation, Post Office Box 1848, Trenton, New Jersey 08625.

(f) The estimated tax shall be paid at the time the declaration is filed. Make your checks or money orders payable to State of New Jersey—TGI. An individual may elect to pay his estimated tax prior to the date prescribed for its payment.

NOTE: You should check your income tax to be withheld in computing your estimated tax.

(g) Failure to file declaration or underpayment of estimated tax: If any taxpayer fails to file a declaration of estimated tax or fails to pay all or any part of an installment of estimated tax, he shall be deemed to have made an underpayment of estimated tax.

Editor's Note: In addition to these rules, a declaration of estimated tax, form NJ-TGI 1040-ES, was filed but is not reproduced herein. Further information on this form is available from the Division of Taxation, P.O. Box 1848, Trenton, N.J. 08625.

(h) Rules on penalties are:

1. If the amount paid with the declaration of estimated tax, paid on or before January 15, 1977, is at least 80 per cent of the taxpayer's tax liability, no penalty will be imposed for underpayment.

2. As an alternative to paragraph 1 above, no penalty will be imposed for underpayment of final tax liability if the estimated tax paid with the declaration of estimated tax is less than 50 per cent of taxpayer's adjusted gross income reportable and reported on his personal 1975 Federal income tax return (Federal form 1040), multiplied by 75 per cent and the applicable New Jersey gross income tax rate.

i. Example:

(1) 1975 Federal adjusted gross income:  
\$15,000.00;

This section was "Exclusion of interest income on All-Savers Certificates".

### 18:35-1.17 Credit for excess contributions

(a) Credit for excess amounts deducted and withheld as worker contributions for unemployment, disability insurance, Workforce Development Partnership Fund and Health Care Subsidy Fund shall be treated as follows:

1. Employers issuing a W-2 form to employees shall include on it:

i. The amount of New Jersey unemployment insurance contributions withheld;

ii. The amount withheld for New Jersey disability benefits fund contributions or for a private plan;

iii. The combined total amount withheld for Workforce Development Partnership Fund and Health Care Subsidy Fund contributions or, in the alternative, the separate amounts contributed to these funds;

iv. The New Jersey unemployment number; and

v. The New Jersey private plan number, if any.

(b) The latter two numbers referred to in (a)liv and v above are assigned by the New Jersey Division of Unemployment and Disability Insurance in the Department of Labor.

(c) An individual claiming a credit against gross income tax for overpayment of unemployment, disability insurance, Workforce Development Partnership Fund or Health Care Subsidy Fund contributions shall claim such credit by including with his New Jersey 1040 or New Jersey 1040-NR a completed New Jersey Form 2450. A claim not received within two years after the end of the calendar year in which the contributions were deducted is void. Such claims are not applicable to withholdings made during calendar years prior to 1983.

Example 1: During 1983, A, who is divorced, worked for two employers in New Jersey. The first withheld the maximum of \$44.00 for unemployment insurance contributions and \$44.00 disability benefits fund contributions from A's salary, as required by law. The second employer withheld \$30.00 from A's wages as contributions to each fund for the total of \$60.00. A files his 1983 Gross Income Tax Return and pays the tax on February 14, 1984 but fails to make claim for the \$60.00 excess contributions withheld during 1983 or qualifying alimony payments made in that year.

During December 1985 A files an amended Gross Income Tax Return containing New Jersey 2450 for 1983 claiming a credit for excess contributions withheld and claiming the alimony deduction that he had originally omitted from the 1983 return. The claim is timely filed with respect to both the contributions withheld and the alimony deduction.

Example 2: Same facts as above except A files an amended return on January 5, 1986. The claim for contributions withheld is too late since it was filed after the expiration of the two year period for refund. The claim for refund based upon alimony deductions, however, is timely because the claim was filed within three years from the time the return was filed or two years from the time the tax was paid, whichever was later.

(d) Claims for gross income credit for excess contributions made by an employee are subject to the provisions of N.J.S.A. 54A:9-8.1 and N.J.A.C. 18:35-2.

New Rule, R.1983 d.586, effective December 19, 1983.

See: 15 N.J.R. 1570(a), 15 N.J.R. 2175(c).

Amended by R.1993 d.136, effective April 5, 1993.

See: 25 N.J.R. 62(a), 25 N.J.R. 1518(b).

Added new (a)liii; redesignated old (a)liii and iv to (a)liv and v; revised (b) and (c).

Amended by R.1994 d.146, effective March 21, 1994.

See: 26 N.J.R. 336(a), 26 N.J.R. 1372(a).

### 18:35-1.18 Extension of time to file

(a) A taxpayer may obtain an extension of time to file the New Jersey Gross Income Tax Return (Form NJ-1040, NJ-1040NR or NJ-1041) for a period of four months beyond the original due date, providing that the requirements of (b) below are satisfied. If the taxpayer is unable to file the return within the four month extension period, the taxpayer may obtain an additional two month extension, for a total of six months. Extensions beyond six months from the original due date of the return will be granted only in cases where the Director determines that exceptional circumstances exist.

1. Exceptional circumstances can be demonstrated by establishing one of the following:

i. Medical evidence, such as a doctor's certification that the taxpayer is unable to file the return before the expiration of the six month extension period because of sickness or hospitalization;

ii. Proof that the taxpayer relied entirely on the advice and expertise of a tax preparer who failed to complete the return within the six month extension period; or

iii. Proof that, despite timely and diligent attempts, the taxpayer is unable to obtain or receive information from third parties which is necessary for the completion of the tax return.

2. This rule provides the authority for an extension of time to file and is in no way to be considered an extension of time to pay the tax due. A taxpayer's tax liability is due, in full, by the original due date of the return. The taxpayer will be subject to interest and late filing penalty as described in (g) below if the full amount is not paid by the original due date of the return.

(d) The exclusion from taxable gross income applies to payments required to be made to employees under the State mandated temporary disability benefit plan pursuant to the New Jersey Temporary Disability Law (N.J.S.A. 43:21-25, et seq.). Payments which are excludable from taxable gross income include temporary disability benefit payments required to be made under the State Plan which is administered by the Bureau of State Plan Disability Benefits under the New Jersey Disability Law. Exclusion from taxable gross income also includes payments required to be made to employees under a company's private plan established pursuant to New Jersey law in lieu of the State Plan described in the preceding sentence and which has been approved by the Bureau of Private Plan Disability Benefits, Division of Unemployment Insurance and Disability Insurance.

(e) Where payment to employees under the health or accident insurance plan is largely discretionary with the employer, such as during the initial period (for example, first seven days), the exclusion from taxable gross income does not apply. Such payments to the employee are subject to tax as wages and salaries. In order for a wage loss payment made under an accident or health insurance plan to be excludable from taxable gross income, the payment to the employee must have a requisite certainty under an enforceable contractual obligation.

(f) Effective June 1, 1982, withholding of the gross income tax shall be required on all payments of wages and salaries made to an employee by an employer. The withholding of the tax is required even though such payments meet all the conditions for exclusion from taxable gross income as made through an accident or health insurance plan for personal injuries or sickness under this section. The only exceptions for the withholding of tax shall be for the following:

1. Temporary disability benefit payments required to be made under the State Plan which is administered by the Bureau of State Plan Disability Benefits under the New Jersey Disability Law;

2. Temporary disability benefit payments required to be made to employees under a company's private plan established pursuant to New Jersey law in lieu of the State Plan described in (f)1 above and which has been approved by the Bureau of Private Plan Disability Benefits, Division of Unemployment Insurance and Disability Insurance; and

3. Payments made to employees for personal injuries or sickness under a health or accident insurance policy by a commercial insurance company.

(g) All taxpayers will be required to file with their annual New Jersey Gross Income Tax Return a claim form furnished by the director for the exclusion of any amounts received by them as an employee through an accident or health insurance plan for personal injuries or sickness which

meet all the conditions for exclusion from taxable gross income under (f)1, 2 and 3 above.

1. Examples:

- i. An employee of Company X is allowed 12 vacation days and 15 sick days for the year 1982. The employee uses 12 vacation days and 10 sick days in 1982 for which he receives his regular wage payment, regardless of the cause for his absence. The amounts received by the employee in 1982 for the 12 vacation days and 10 sick days are subject to tax as wage and salary income to the employee and the employer must also withhold gross income tax on such payments.

- ii. Company Y has a self-insured disability plan for its employees who are absent from work because of accident or sickness. The plan is fully funded by the employer company and the employees make no contribution to the plan. Payment for the full amount of wages is made to disabled employees absent from work, on the eighth calendar day. Payment for the initial seven days to the covered employee is discretionary with the company employer under the plan. The amount received by the absent employee because of his disability is excludable from taxable gross income as health or accident insurance after the initial seven days of absence but is subject to withholding tax. Any amount received by the employee as payment for the seven initial days is subject to tax as wage and salary income to the employee and is also subject to withholding tax.

- iii. Employee C receives a payment in 1982 from the New Jersey Disability Benefit Fund during an absence from work because of temporary disability resulting from illness. Both the employee and employer have contributed to the disability benefit fund. The total amount received by the employee from the New Jersey Disability Benefit Fund is excludable from taxable gross income as a payment for health or accident insurance and is not subject to withholding tax.

- iv. Employee D is absent from work in 1982 because of illness and receives from the X Insurance Company the full amount of his wages during the period of his absence from work. The payment was made from a health or accident insurance policy to which only the employer has contributed. The amounts received by the employee are excludable from taxable gross income as health or accident insurance and are not subject to withholding tax.

R.1982 d.164, effective June 7, 1982.

See: 14 N.J.R. 271(a), 14 N.J.R. 581(a).

**18:35-1.16 (Reserved)**

R.1982 d.258, effective August 16, 1982.

See: 14 N.J.R. 332(a), 14 N.J.R. 921(b).

Repealed by R.1988 d.299, effective July 5, 1988.

See: 20 N.J.R. 514(a), 20 N.J.R. 1571(a).