

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;

tion of the State of New Jersey in conjunction with the Division of Taxation shall cooperate in identifying debtors who owe money to the State through its various agencies or institutions and who shall be entitled to any refund of Gross Income Taxes or to a Homestead Rebate from the Division of Taxation. It is also the intent of this subchapter to establish procedures for setting off against any such refund or rebate the sum of any debt owed to the State. The procedures contained in this subchapter are designed to comply with N.J.S.A. 54:50-8 and N.J.S.A. 54:50-9, the confidentiality provisions of the State Tax Uniform Procedure Law. They also afford the taxpayer opportunity to assert any other legal rights he may have prior to final setoff.

18:35-2.2 Definitions

“Claimant agency or institution” means and includes any agency or institution of the State Government. Although not necessarily limited thereto, a convenient organizational summary may be found in the current State of New Jersey, Official Directory, published annually by the New Jersey Secretary of State’s Office and available therefrom.

“Consolidated Debtor File” means the consolidated listing of all debts owed the State as derived from the debtor files of each participating State agency.

“Debt” means any liquidated sum due and owing any claimant agency which has accrued through contract, subrogation, tort, operation of law, or any other legal theory regardless of whether there is an outstanding judgment for that sum.

“Debtor” means any individual owing money to or having a delinquent account with any claimant agency or institution which obligation has not been adjudicated satisfied by court order, set aside by court order, or discharged in bankruptcy.

“Debtor file” means a list of liquidated accounts for which the claimant agency has exhausted its collection methods. A minimum of \$25.00 for total debts per individual per claimant agency or institution will be established. This threshold amount is subject to change in future years by the Division of Taxation based upon experience. Accounts involving more than one debtor must be broken down individually, and the debt allocated to each individual by a claimant agency. The list must be supplied on magnetic tape, punched cards, or other input media as approved by the Division of Taxation and contain such information as the Division may require in order to setoff with the beginning of the refund cycle in February. One update of this file will be permitted per agency prior to the homestead rebate cycle in June.

“Division” means the New Jersey Division of Taxation, Department of Treasury.

“Net proceeds collected” means gross proceeds collected through final setoff against a debtor’s refund or rebate minus any collection fee charged by the Division to provide for any expenses of the collection effort.

“Rebate” means a homestead property tax rebate pursuant to P.L. 1990, c.61 (N.J.S.A. 54:4-8.57 et seq.).

“Refund” means a refund of an overpayment of taxes paid pursuant to the “New Jersey Gross Income Tax Act” (N.J.S.A. 54A:1-1 et seq.).

As amended, R.1984 d.62, effective March 19, 1984.

See: 15 N.J.R. 2031(a), 16 N.J.R. 556(a).

Definition of “Debtor file:” “50.00” changed to “\$25.00”; 1982 deleted.

Amended by R.1994 d.147, effective March 21, 1994.

See: 26 N.J.R. 5454(a), 26 N.J.R. 1373(a).

18:35-2.3 Procedure for setoff

(a) A claimant agency seeking to attempt collection of a debt through setoff shall notify the Division in writing and supply the Division with a debtor file containing information necessary to identify the debtor whose refund or rebate is sought to be setoff. Notification to the Division and the furnishing of identifying information must occur on or before a date specified by the Division.

(b) With prior approval of the Division, the debtor file may also contain liquidated debt information for every alleged debtor listed on the file, provided that the debtor file is accompanied by a certification of all debts listed on the debtor file.

As amended, R.1982 d.479, effective January 3, 1983.

See: 14 N.J.R. 705(b), 15 N.J.R. 37(b).

Added (b).

18:35-2.4 Matching

(a) Upon timely receipt of notifications and debtor files from participating claimant agencies, the Division will make continual comparisons of the consolidated debtor file with the Refund file and with the Rebate file. A complete match will result from a matching of two sets of identification information. A complete match affects the Gross Income Tax and Homestead Rebate systems by placing a hold code in the taxpayer’s account which prevents a refund or rebate check from being sent out until initial certification.

(b) A partial match occurs from an incomplete match of the identification information used, and it results in the placing of the taxpayer’s account on a contingent hold status for 15 days. During that period the Division and the claimant agency may make a review of the relevant identification information to determine if the incomplete match is the result of a clerical, transcription, or other error. If that is the case, the contingent hold code is removed, the account is placed on hold, and is treated as a complete match. If a reconciliation of the identification information cannot be made, the account is returned to the claimant agency or institution for investigation, and the refund/rebate check is released to the taxpayer. The claimant agency may resubmit the account at such time of updating the debtor file as the Division may direct.

Emergency New Rule, R.1991 d.166, effective February 27, 1991 (Expires April 28, 1991).

See: 23 N.J.R. 908(a).

Adopted Concurrent Proposal, R.1991 d.273, effective June 3, 1991.

See: 23 N.J.R. 908(a), 23 N.J.R. 1806(a).

Provisions of emergency new rule R.1991 d.166 readopted without change.

18:35-1.27 Interest on overpayments

(a) Interest will be paid on an overpayment of gross income tax which has not been refunded six months and one day after the later of:

1. The last date for filing a gross income tax return as prescribed by statute or permitted by an approved application for extension of time to file; or
2. The date the return, whether original or amended, requesting the refund is actually filed.

(b) Interest paid pursuant to (a) above on refunds which are claimed prior to July 1, 1993, and paid by the Division of Taxation prior to July 1, 1993, shall be calculated at the rate of six percent per annum.

(c) Interest paid pursuant to (a) above on refunds which are claimed prior to July 1, 1993, and paid by the Division of Taxation after June 30, 1993, shall be calculated at the rate of six percent per annum up until June 30, 1993. Any interest accruing to the taxpayer after that date will be calculated on the total amount due on June 30, 1993, at the rate determined by the Director to be equal to the prime rate pursuant to N.J.S.A. 54:48-2.

(d) Interest paid pursuant to (a) above on refunds which are claimed after June 30, 1993 shall be calculated at the rate determined by the Director to be equal to the prime rate pursuant to N.J.S.A. 54:48-2.

(e) When interest is to be paid pursuant to (a) above, it will be calculated beginning from one day after the later of the last date for filing a gross income tax return as prescribed by statute or permitted by an approved application for extension of time to file, or the date the return, whether original or amended, requesting the refund is actually filed. Interest will continue to accrue to a date (to be determined by the Director) preceding the date of the refund check by not more than 30 days.

(f) An overpayment of gross income tax is deemed to occur on the last date for filing a gross income tax return, as prescribed by statute or permitted by an approved application for extension of time to file, or on the date the return, whether original or amended, requesting the refund is actually filed.

(g) No interest will be paid on any overpayment of gross income tax refunded within six months of the dates indicated in (a)1 and (a)2, above.

(h) For the purposes of this section, a gross income tax return is not considered to be filed unless and until it contains sufficient required information to permit the mathematical verification of tax liability and the resulting overpayment shown on the return. All required schedules and attachments must be submitted in order for the return to be deemed filed.

(i) This section shall take effect immediately and apply to all tax years beginning after December 31, 1990, as well as any other return filed (within the applicable statute of limitations) after April 15, 1992 which results in an overpayment.

New Rule, R.1994 d.133, effective March 21, 1994.

See: 26 N.J.R. 112(a), 26 N.J.R. 1372(b).

18:35-1.28 Commuter transportation benefits reporting by employer

(a) Pursuant to N.J.S.A. 54A:7-2, an employer shall provide an employee with a written statement as prescribed by the Director in (b) below showing the cost of commuter transportation benefits paid by the employer to the employee. Should said benefits exceed the amount of \$720.00 for the taxable year beginning on or after January 1, 1993, but before January 1, 1994, then the amount received by the employee in excess of \$720.00 shall be includable in gross income of the employee. For taxable years following thereafter, the Director shall adjust the limit, rounded down to the nearest \$5.00, in proportion to the change in the average consumer price index for all urban consumers in the New York and northeastern New Jersey and the Philadelphia areas, as reported by the United States Department of Labor, from calendar year 1993 to the calendar year ending before the taxable year. Notice of the adjusted limit shall be published in the New Jersey Register. Amounts received by the employee not exceeding \$720.00 shall not be included in the employee's gross income.

(b) The written statement required to be provided by the employer to the employee as set forth in (a) above may be set forth on a W-2 form or other written information statement showing the amount of such benefits.

New Rule, R.1995 d.19, effective January 3, 1995.

See: 26 N.J.R. 4173(a), 27 N.J.R. 143(a).

Public Notice: Commuter transportation benefit limit for 1995.

See: 27 N.J.R. 4737(a).

Public Notice: Commuter transportation benefit limit for 1996.

See: 28 N.J.R. 2639(a).

SUBCHAPTER 2. SETOFF OF INDIVIDUAL LIABILITY

18:35-2.1 Purpose

The purpose of this subchapter is to establish a policy and to provide a system whereby any claimant agency or institu-