

CHAPTER 35

NEW JERSEY GROSS INCOME TAX

Authority

N.J.S.A. 54:50-1, 54A:9-8.2 and 54A:9-17(a).

Source and Effective Date

R.2003 d.285, effective June 20, 2003.  
See: 35 N.J.R. 1384(a), 35 N.J.R. 3386(a).

Chapter Expiration Date

In accordance with N.J.S.A. 52:14B-5.1c, Chapter 35, New Jersey Gross Income Tax, expires on December 17, 2008. See: 40 N.J.R. 2222(a).

Chapter Historical Note

Chapter 35, New Jersey Gross Income Tax, was adopted prior to September 1, 1969.

Subchapter 2, Setoff of Individual Liability, was adopted as R.1982 d.161, effective May 17, 1982. See: 13 N.J.R. 940(a), 14 N.J.R. 474(b).

Pursuant to Executive Order No. 66(1978), Chapter 35, New Jersey Gross Income Tax, was readopted as R.1983 d.353, effective August 12, 1983. See: 15 N.J.R. 1091(a), 15 N.J.R. 1488(c).

Pursuant to Executive Order No. 66(1978), Chapter 35, New Jersey Gross Income Tax, was readopted as R.1988 d.299, effective June 7, 1988. See: 20 N.J.R. 514(a), 20 N.J.R. 1571(b).

Pursuant to Executive Order No. 66(1978), Chapter 35, New Jersey Gross Income Tax, was readopted as R.1993 d.315, effective June 4, 1993. See: 25 N.J.R. 1500(a), 25 N.J.R. 2906(b).

Former Subchapter 3, Information Return for Business Employment Incentive Program/Business Relocation Assistance Grant Program of the New Jersey Economic Development Authority, was adopted as R.1997 d.533, effective December 15, 1997. See: 29 N.J.R. 4076(b), 29 N.J.R. 5313(a).

Pursuant to Executive Order No. 66(1978), Chapter 35, New Jersey Gross Income Tax, was readopted as R.1998 d.195, effective March 26, 1998. See: 30 N.J.R. 612(a), 30 N.J.R. 1428(a).

Chapter 35, New Jersey Gross Income Tax, was readopted as R.2003 d.285, effective June 20, 2003. See: Source and Effective Date. See, also, section annotations.

Subchapter 2, Excludable Income, was renamed Exclusions and Deductions by R.2007 d.55, effective February 5, 2007. See: 38 N.J.R. 4658(a), 39 N.J.R. 546(a).

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#### SUBCHAPTER 1. GROSS INCOME—CATEGORIES AND CALCULATION

##### 18:35-1.1 Net profits from business

(a) Each taxpayer is subject to gross income tax on the taxpayer's "net profits from business" within the meaning of N.J.S.A. 54A:5-1b, which shall be determined as provided in this subchapter.

(b) For purposes of the Gross Income Tax Act, a sole proprietorship, which shall include self-employed individuals and independent contractors, is a form of business in which one taxpayer owns all the assets of a business and which is not a partnership or corporation. A single member limited liability company whose member is an individual, estate, or trust shall be treated as a sole proprietorship, unless classified otherwise for Federal tax purposes. Sole proprietors shall report their income or loss as net profits from business.

(c) A taxpayer's net profits from business shall be determined by taking into account all income of the taxpayer derived from the conduct of a business, profession or any other activity intended to produce income, provided such activity qualifies for and reports as a trade or business for Federal income tax purposes. All income attributable to the taxpayer's conduct of a trade or business, reduced by costs and expenses as provided in (d) below, shall be taken into account in determining the taxpayer's net profits from business. All other income of the taxpayer subject to gross income tax that is not attributable to the conduct of a trade or business shall be included in one or more of the other categories of gross income specified in N.J.S.A. 54A:5-1 according to its character and shall not be includable in the category of income "net profits from business." The determination of whether income is derived from the conduct of a trade, business or profession shall be based upon an examination of facts and circumstances of the taxpayer's activities.

1. Income derived as remuneration for services rendered in the sole proprietorship's conduct of a trade or business shall be taken into account in determining a self-employed taxpayer's net profits from business. Income derived by a taxpayer in the taxpayer's capacity as an employee, as defined in N.J.A.C. 18:35-7.1, shall not be taken into account in determining the taxpayer's net profits from business, but rather shall be taxed under N.J.S.A. 54A:5-1a (salaries, wages, etc.).

2. Interest and dividend income derived by a taxpayer in the conduct of a trade or business shall be taken into account in determining a taxpayer's net profits from business. The taxpayer shall annex to the taxpayer's return a statement demonstrating that the interest or dividends were realized in the conduct of the trade or business. Interest and dividends from investment activities or other income-producing activities which do not constitute the conduct of a trade or business shall be separately stated on the taxpayer's return and taxed either as interest described in N.J.S.A. 54A:5-1e or dividends described in N.J.S.A. 54A:5-1f.

3. Rental income derived by a taxpayer in the conduct of a trade or business shall be taken into account in determining a taxpayer's net profits from business. Rental income of a taxpayer which is not received in the conduct of a trade or business shall be taken into account in determining the taxpayer's net gains or net income from rents, royalties, patents and copyrights described in N.J.S.A. 54A:5-1d.

4. Royalty, patent, or copyright income derived by a taxpayer in the conduct of a trade or business that licenses intangible property shall be taken into account in determining the taxpayer's net profits from business. Income derived from royalties, patents or copyrights of a taxpayer which is not derived from a trade or business shall be taken into account in determining the taxpayer's net gains or net income from or in the form of rents, royalties, patents and copyrights described in N.J.S.A. 54A:5-1d.

5. Gains from the sale, exchange or other disposition of trade or business property shall be taken into account in determining a taxpayer's net profits from business. The taxpayer shall annex to the taxpayer's return a statement which demonstrates that gains and losses from the sale, exchange, or other disposition of property were realized in the conduct of a trade or business. The sale, exchange or other disposition of property which is not directly related to or employed in the conduct of a trade or business must be reported as described in N.J.S.A. 54A:5-1c, net gains or income from the disposition of property. Gain or loss from the sale or disposition of assets employed in a trade or business as a result of a complete liquidation of the business must be reported as described in N.J.S.A. 54A:5-1c, net gains or income from the disposition of property.

i. A complete liquidation of a business is deemed to occur in the tax year when the business discontinues

all business activities and all its assets have been distributed.

6. A taxpayer's distributive share of income or loss from a partnership, S corporation, or estate or trust shall not be taken into account in determining a taxpayer's net profits from business, regardless of the character of the in-

Additionally, Partner X had a gain of \$5,000 on the disposition of his partnership interest and Partner Y had a loss of \$2,000 on the disposition of her partnership interest.

The partners will report the following on their individual returns:

Partner X			
NJ-1040			
Net gains or income from disposition of property:			
Gain/loss from complete liquidation	\$7,500		
Gain/loss sale of partnership interest	\$5,000	\$12,500	
Distributive share of partnership income		\$2,000	

Partner Y			
	Everywhere	New Jersey	
NJ-1040NR			
Net gains or income from disposition of property:			
Gain/loss from complete liquidation	\$7,500	\$4,800	
Gain/loss sale of partnership interest	(\$2,000)	\$0	\$5,500 \$4,800
Distributive share of partnership income			\$2,000 \$1,500

Since the partnership had a complete liquidation, Partner X will report \$2,000 in the distributive share of partnership income category and \$12,500 in the net gains from disposition of property category.

Partner Y will report \$2,000 in the distributive share of partnership income category and \$5,500 in the net gains from disposition of property category in the everywhere column and \$1,500 in the distributive share of partnership income category and \$4,800 in the net gains from disposition of property category in the New Jersey source column. The gain or loss from the sale of a partnership interest is from an intangible not employed in a trade or business therefore, not subject to tax for a nonresident.

Example 12:

Partners A and B who are both residents of New Jersey share profit and loss equally. On August 31, 2005, Partners A and B sold their rental building located in New Jersey at a gain of \$16,000. The partnership continued operating their other business activity, which generated ordinary income of \$20,000.

The partnership in completing its NJ-1065 will determine partnership income as follows:

Ordinary income	\$20,000
Gain from disposition	<u>\$16,000</u>
Partnership income	\$36,000

Since the partnership did not have a complete liquidation, the partnership will include the gain from the sale of its rental property in with partnership income.

The partners will report the following on their individual tax returns:

	Partner A (1/2)	Partner B (1/2)
NJ-1040		
Partnership income	\$18,000	\$18,000

Amended by R.1981 d.6, effective January 8, 1981.  
 See: 12 N.J.R. 676(a), 13 N.J.R. 111(d).  
 Repeal and New Rule, R.1994 d.110, effective March 7, 1994.  
 See: 25 N.J.R. 677(a), 26 N.J.R. 1241(b).  
 Section was "Partnerships".  
 Recodified from N.J.A.C. 18:35-1.14 and amended by R.1998 d.195, effective April 20, 1998.  
 See: 30 N.J.R. 612(a), 30 N.J.R. 1428(a).  
 Changed N.J.A.C. references throughout. Former N.J.A.C. 18:35-1.3, Declaration of estimated tax; 1976, repealed.  
 Repeal and New Rule, R.1999 d.95, effective March 15, 1999.  
 See: 30 N.J.R. 3377(b), 31 N.J.R. 779(a).  
 Section was "Distributive share of partnership income".  
 Amended by R.2007 d.14, effective January 16, 2007.  
 See: 38 N.J.R. 3502(a), 39 N.J.R. 238(b).  
 Rewrote the section.  
 Amended by R.2008 d.42, effective March 3, 2008.  
 See: 39 N.J.R. 4559(a), 40 N.J.R. 1373(b).  
 Deleted former (a)1; recodified former (a)2 as (a)1; in (a)1, added the last sentence; added new (a)2; and in (d)1iii(3), deleted the second sentence.  
 Administrative correction.  
 See: 40 N.J.R. 1927(a).

Case Notes

Statute permitting taxpayer to deduct from partnership business income all costs and expenses incurred in conduct of business authorizes deduction of only ordinary business expenses, not all expenses. *Sabino v. Director, Div. of Taxation*, 296 N.J.Super. 269, 686 A.2d 1197 (A.D.1996).

Regulation could not exclude from partnership net income dividends and capital gains. *Smith v. Director, Div. of Taxation*, 108 N.J. 19, 527 A.2d 843 (1987).

Partnership business expenses could be deducted from partnership income when determining taxpayers' distributive share. *Smith v. Director, Div. of Taxation*, 108 N.J. 19, 527 A.2d 843 (1987).

An individual partner in a law firm that required capital for the running of the operation was permitted to deduct from gross income subject to tax interest on money borrowed to meet his required investment in the partnership. *Dantzler v. Director, Division of Taxation*, 18 N.J.Tax 507 (1999).

Regulation relating to deductibility of reimbursed expenses of individual partner for purposes of computing partner's distributive share of partnership income; void. *Sabino v. Director, Div. of Taxation*, 14 N.J.Tax 501 (1995).

Paragraph (c)4 held inconsistent with statute: in determining liability for partner's distributive share of partnership income, partnership expenses incurred in connection with tax exempt income were deductible; expense incurred by securities partnership in the conduct of its business may be deductible against all other forms of partnership income, including dividends and capital gains, in determining partner's distributive shares of partnership income. *Smith v. Director, Div. of Taxation*, 7 N.J.Tax 187 (Tax Ct.1984), affirmed per curiam 8 N.J.Tax 319, affirmed 108 N.J. 19, 527 A.2d 843 (App.Div.1986).

Depletion expenses of partnership engaged in oil and gas production are properly deductible by a partner subject to New Jersey gross income tax; since percentage depletion, to the extent it exceeds cost depletion, is not attributable to production of income for the purpose of New Jersey gross income tax, it is not deductible in computing New Jersey taxable income. *Lee v. Director, Div. of Taxation*, 6 N.J.Tax 385 (Tax Ct.1984).

**18:35-1.4 Clergymen; self-employed**

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).

Recodified from N.J.A.C. 18:35-1.2 by R.1998 d.195, effective April 20, 1998.

See: 30 N.J.R. 612(a), 30 N.J.R. 1428(a).

Former N.J.A.C. 18:35-1.4, Information furnished at source, repealed.

**18:35-1.5 S corporations and S corporation shareholders**

(a) The following words and terms, when used in this section, shall have the following meanings:

"Hybrid" means a Federal S corporation that has not made the New Jersey S corporation election, and the corporation conducts business both within and outside of New Jersey.

"Pro rata share" means the portion of any items attributable to an S corporation shareholder determined in accordance with I.R.C. sections 1377 and 1362.

"S corporation" means a corporation that meets the Federal definition under I.R.C. Section 1361, regardless of whether a New Jersey S corporation election was made.

"S corporation income" means the net of an S corporation's items of income, loss or deduction, and determined without exclusion of items of income properly taxable or deduction of expenses or losses prohibited for Gross Income Tax purposes.

(b) Determining S corporation's income. S corporation income is properly determined by netting together all items of income, gain, loss or expense reported on the S corporation's Federal form 1120S, Schedule K, and making modifications required under the Gross Income Tax Act for expenses and losses which were deducted for Federal purposes, but are not permitted to be deducted for State purposes, Federally exempt income which is taxable to New Jersey, Federally taxable income which was included for Federal purposes, but is exempt for New Jersey purposes, and expenses not deducted Federally, which are allowable for New Jersey.

1. Additions are required for:

i. Taxes based on or measured by profits, income, business presence or business activity, which were paid or accrued to the United States, any state, including New Jersey, a political subdivision of any state, or the District of Columbia. Such taxes include, but are not limited to, corporate franchise or income taxes, unincorporated business taxes, net worth taxes, gross receipts taxes, local and city income taxes, business occupancy taxes;

ii. Income taxes paid or accrued by the S corporation on behalf of, or in satisfaction of the liability of, shareholders of the S corporation;

iii. Expenses incurred to earn or collect income or gains that are exempt from New Jersey tax;

iv. Losses attributable to the disposition of obligations of the Federal government, any of its territories or instrumentalities, the State of New Jersey or its political subdivisions; and

v. Interest income derived from the obligations of states other than New Jersey, their municipalities and political subdivisions.

2. Subtractions are required for:

i. Gains attributable to the disposition of obligations of the Federal government, any of its territories or instrumentalities, the State of New Jersey or its political subdivisions;

ii. Interest income derived from the obligations of the Federal government, any of its territories or instrumentalities, the State of New Jersey or its political subdivisions;

iii. Expenses incurred to generate Federally excludable income which is taxable to New Jersey; and

iv. Expenses which Federally flow to the shareholder as itemized deductions (for example, I.R.C. section 179 expense, charitable contributions) or which are limited for Federal tax purposes (for example, meals and entertainment) unless specifically restricted or prohibited under the Gross Income Tax Act.

(c) A shareholder's pro rata share is determined by the following:

1. A New Jersey electing S corporation must determine S corporation income and provide each shareholder with a NJ K-1 reporting the shareholder's pro rata share based on ownership percentage, the New Jersey allocation factor, or deemed allocation factor, and all other information required for the proper filing of a New Jersey Gross Income Tax return.

2. The shareholder of a Federal S corporation that has not made the New Jersey S corporation election must compute the pro rata share on a New Jersey Worksheet, Reconciliation Schedule K-1, Federal Form 1120S using the information from the Federal Schedule K-1, Form 1120S, and in accordance with (b) above.

3. A Federal S corporation's income or loss is allocated inside or outside of New Jersey based on the percentages determined by the S corporation in accordance with N.J.S.A. 54A:5-10.

4. A Federal S corporation that does not have a New Jersey filing requirement and does not file a New Jersey

corporate return is deemed to allocate 100 percent of its income outside of New Jersey.

5. Deemed allocation of income outside of New Jersey. If a Federal S corporation files a New Jersey corporation business tax return allocating 100 percent of its income to New Jersey and, in accordance with N.J.A.C. 18:7-8.3, has income that qualifies as duplicated on the corporate income tax returns filed in New Jersey and another jurisdiction and if a credit for taxes paid to other jurisdictions is allowed on the New Jersey corporation business tax return, for New Jersey Gross Income Tax purposes, the qualified duplicated income is deemed to be allocated outside of New Jersey, and the entity is deemed to have an allocation factor outside of New Jersey.

Example: On its New Jersey corporate business tax (CBT) return, a S corporation reports entire net income of \$15,000 and a New Jersey allocation factor of 100 percent. The S corporation is required to pay a corporate income tax to another state on \$3,000 of income, which is also reported to and taxed by New Jersey. The duplicated income qualifies for inclusion in the S corporation's New Jersey calculation of a credit for taxes paid to other jurisdictions. For Gross Income Tax purposes, \$3,000 of income is deemed to be allocated outside of New Jersey, and the entity is deemed to have allocated 20 percent of its income outside of New Jersey.

(d) Determining a S corporation shareholder's New Jersey Gross Income Tax reporting requirement. A Federal S corporation shareholder's New Jersey gross income tax reporting requirement is determined based on the shareholder's New Jersey residency, whether or not the S corporation has made a valid New Jersey S corporation election, and the S corporation's allocation factor or deemed allocation factor.

#### 1. Resident shareholder.

i. A resident shareholder must report both the pro rata share of S corporation income or loss (subject to limitations) from a New Jersey electing S corporation; and

ii. The pro rata share of S corporation income or loss (subject to limitations) not allocated to New Jersey from a New Jersey nonelecting Federal S corporation.

#### 2. Nonresident shareholder.

i. By signing the New Jersey S corporation or New Jersey QSSS Election Form CBT-2553, a nonresident shareholder consents to the corporation's election to be treated as a New Jersey S corporation and to New Jersey's right and jurisdiction to tax and collect the tax on the nonresident shareholder's S corporation income.

ii. If a nonresident shareholder fails to sign and give consent, the S Corporation is required to calculate the nonconsenting shareholder's Gross Income Tax liability by applying the maximum gross income tax rate in effect to the shareholder's pro rata share allocated to New Jer-

sey. The resulting gross income tax is reported and paid by the S corporation with its corporate business tax return and is listed on the nonconsenting shareholder's Schedule NJ K-1. A nonconsenting shareholder is required to file a Nonresident Gross Income Tax Return, Form NJ-1040NR, and will report as an estimated payment, the amount listed on their Schedule NJ K-1 as payments made on their behalf by the S corporation.

iii. A nonresident shareholder must determine the reporting requirement of the pro rata share earned everywhere as if the shareholder was a New Jersey resident.

iv. A full-year nonresident shareholder must report as New Jersey source income or loss (subject to limitations) the pro rata share allocated to New Jersey from a S corporation that has made the New Jersey S corporation election, regardless of the category in which the shareholder is required to report the income on the New Jersey Nonresident Gross Income Tax Return.

v. Pro rata share from a Federal S corporation that has not made the New Jersey election is not reportable as New Jersey source income by a nonresident.

3. Part-year resident. A part-year resident must report on a resident return, the pro rata share for the period of New Jersey residency. This is determined by calculating a residency percentage, which is the number of days of the S corporation's year (fiscal or calendar) that the shareholder was a New Jersey resident divided by 365 days (366 for a leap year). A separate residency percentage must be calculated for each S corporation.

Example: If an S corporation's fiscal year is October 1 through September 30 and a shareholder was a New Jersey resident through April 15th, the shareholder was a New Jersey resident for 197 days of the S corporation's fiscal year (October 1 - April 15) 197 days divided by 365 equals a residency percentage of 54 percent.

i. For S corporations that have made the New Jersey S election, the total amount of pro rata share of S corporation income from the NJ-K1 must be multiplied by the residency percentage. For S corporations not making the New Jersey S election, the pro rata share of income or loss not allocated to New Jersey must be multiplied by the residency percentage.

4. A part-year nonresident shareholder must determine the reporting requirement of income earned everywhere as if the shareholder was a New Jersey resident. A nonresidency percentage (100 percent less the calculated residency percentage) is applied to determine the amount of pro rata share reportable for the nonresidency period.

i. A part-year nonresident shareholder must determine the New Jersey source pro rata share by applying the nonresidency percentage to the pro rata share of income or loss allocated to New Jersey by a S corporation, which has made the New Jersey S corporation election, regardless of the category in which the shareholder is

required to report the income on the New Jersey part-year nonresident income tax return. Income or loss from a Federal S corporation which has not made the New Jersey S corporation election is not reportable as New Jersey source income by a nonresident.

5. If the corporation is a New Jersey electing S corporation, the shareholders must report as follows:

i. A resident shareholder reports the entire pro rata share, regardless of where it is allocated.

ii. A nonresident shareholder reports the pro rata share allocated to New Jersey as New Jersey source income and reports all of the pro rata share, regardless of where it is allocated, as everywhere income.

iii. A part-year resident shareholder applies the residency percentage to all of the net pro rata share, regardless of where it is allocated.

iv. A part-year nonresident shareholder applies the nonresidency percentage to the net pro rata share allocated to New Jersey and reports the result as New Jersey source income, and applies the nonresidency percentage to all of the net pro rata share, regardless of where it is allocated, and reports the result as income from everywhere.

6. If the corporation is a Federal S corporation that did not make the New Jersey S election, including a Federal S corporation that does not file a New Jersey corporate return, the shareholders must report as follows:

i. A resident shareholder reports the net pro rata share not allocated to New Jersey.

ii. A nonresident shareholder does not report any of the net pro rata share as New Jersey source income, but reports the net pro rata share not allocated to New Jersey as income from everywhere.

iii. A part-year resident shareholder applies the residency percentage to the net pro rata share not allocated to New Jersey.

iv. A part-year nonresident shareholder does not report any of the net pro rata share as New Jersey source income, but applies the nonresidency percentage to the net pro rata share not allocated to New Jersey and reports the result as income from everywhere.

(e) Determining Shareholder's New Jersey Accumulated Adjustments Account ("NJ AAA" or "New Jersey AAA"). A New Jersey Accumulated Adjustments Account must be maintained for a resident shareholder of a New Jersey electing or a New Jersey nonelecting Federal S corporation. The shareholder's initial beginning balance is zero for the first tax year beginning after July 7, 1993.

1. A New Jersey AAA Worksheet should be used to record each year's adjustments and to determine the year's ending balance, which may be a negative amount.

2. A yearly adjustment is made for the shareholder's net pro rata share of S corporation income or (loss) including the income, gain or loss from the S corporation's complete liquidation of its assets which is reported by the shareholder in the category "net gains or income from disposition of property."

i. Adjustments for other income and losses include, without limitation, New Jersey tax-exempt income, gains and losses earned by the S corporation during the tax year.

ii. Other reductions which were made to the shareholder's Federal AAA or Federal Other Adjustments Account (OAA) must also be made to the New Jersey AAA, provided that these reductions have not already been taken into consideration in calculating net pro rata share of S corporation income. Other reductions include, but are not limited to, taxes based on income, business presence or activity; health or life insurance; fines or penalties; club dues; foreign taxes; and expenses incurred by the S corporation to generate New Jersey tax-exempt income, gains or losses.

iii. Distributions. New Jersey AAA must be reduced by the amount of any distributions the shareholder received from the S corporation during the year, up to the New Jersey AAA balance. Distributions in excess of the New Jersey AAA balance are to be applied to the shareholder's New Jersey earnings and profits account and after that against the shareholder's New Jersey adjusted basis.

3. Hybrid. Distributions from a hybrid corporation must be allocated to both the income earned inside New Jersey and the income earned outside of New Jersey using the corporation's allocation factor or deemed allocation factor.

4. For a Federal S corporation that has not made the New Jersey election, the income, loss, and reductions to be included on a New Jersey AAA Worksheet are based on the corporation's allocation factor, or deemed allocation factor outside of New Jersey.

5. The shareholders must retain all New Jersey AAA information until they dispose of their shares of the S corporation.

(f) The earnings and profits accumulated in a Federal S corporation prior to the New Jersey S corporation election becoming effective are classified New Jersey Earnings and Profits ("NJ E and P") and are taxed to a resident shareholder as dividends when distributed.

1. Shareholder of an S corporation which has made the New Jersey S corporation election. A shareholder in a Federal S corporation which has made the New Jersey S corporation election will use a NJ E and P Account for New Jersey Resident Shareholders of an Electing New Jersey S Corporation Worksheet, to annually adjust and calculate NJ

Net pro rata share of S corporation income:		\$2,063
Net gains or income from disposition of property:	\$10,450	
Gain on sale of S corporation assets allocated outside New Jersey	\$5,400	
Gain on sale of New Jersey C corporation stock	(\$7,813)	
Loss on sale of Federal S corporation stock		\$8,037

Nonresident shareholder:

For a nonresident shareholder there is no New Jersey source income from these transactions. If the nonresident has a New Jersey filing requirement due to other New Jersey activity this transaction would be included on the nonresident return in the following manner:

	Everywhere Income	New Jersey Income
Net pro rata share of S corporation income	\$2,063	\$0
Gain from disposition of property	\$8,037	\$0

New Rule, R.2007 d.14, effective January 16, 2007.  
 See: 38 N.J.R. 3502(a), 39 N.J.R. 238(b).

**18:35-1.6 Civil unions**

(a) For the purposes of this chapter:

1. "Civil union" means the legally recognized union of two eligible individuals of the same sex established pursuant to P.L. 2006, c. 103.

2. "Civil union couple" means two persons who have established a civil union pursuant to P.L. 2006, c. 103.

3. "Civil union partner" means a person who has established a civil union pursuant to P.L. 2006, c. 103.

(b) All State gross income tax benefits, protections and responsibilities of spouses as set forth in this chapter, shall apply in like manner to civil union partners. Where reference

to Federal income tax laws or procedures are required to arrive at a State income tax determination, civil union partners shall be treated in all respects as spouses for that determination.

New Rule, R.2008 d.42, effective March 3, 2008.  
 See: 39 N.J.R. 4559(a), 40 N.J.R. 1373(b).

SUBCHAPTER 2. EXCLUSIONS AND DEDUCTIONS

**18:35-2.1 Interest and gains from certain obligations; taxable status of State and Federal securities**

(a) Gross income shall not include interest on obligations:

1. Issued by or on behalf of New Jersey or any county, municipality, school or other district, agency, authority, commission, instrumentality, public corporation (including one created or existing pursuant to agreement or compact with this or any other state), body corporate and politic or political subdivision of New Jersey:

i. Specifically included within this subsection is interest received with respect to Certificates of Participation issued in connection with lease-purchase agreements, provided that the liability for payments of principal and interest is solely that of a New Jersey governmental entity;

2. Those obligations which are statutorily free from State or local taxation under any act of New Jersey or under the laws of the United States.

(b) Under the authority of N.J.S.A. 54A:9-17, which empowers the Division to require such facts and information to be reported as are deemed necessary to enforce the provisions of the Gross Income Tax Act, every person required to file a resident New Jersey gross income tax return (NJ-1040) for a taxable year shall report on such return the amount of interest received or accrued during the taxable year which is exempt from the gross income tax.

(c) The term "net gains or income" shall not include gains or income derived from obligations whose interest is exempt from tax under (c)1 below. Losses from sales of such exempt securities shall not be taken into account in the computation of gains from disposition of property. A list of various securities follows, together with an indication of whether the interest and the gains therefrom are taxable or exempt:

1. Federal securities:

Security	Interest
i. Asian Development Bank	T
ii. Bank for Cooperatives	E
iii. Environmental Financing Authority	T
iv. Export-Import Bank of the United States ("Eximbank"):	
(1) Series 1978—B debentures	E
(2) Participation certificates (reversal of Counsel opinion dated 8/29/67)	T
v. Federal Deposit Insurance Corporation obligations	E
vi. Federal Housing Authority (F.H.A.)	E
vii. Farmers Home Administration	E
viii. Federal Financing Bank	E
ix. Federal Home Loan Bank	E
x. Federal Home Loan Mortgage Corp.	T
xi. Federal Intermediate Credit Banks	E
xii. Federal Land Banks	E
xiii. Federal National Mortgage Association (Fannie Mae):	
(1) Interest on bonds and debentures	T

(2) Guaranteed Participation Certificates	T
xiv. Federal Savings and Loan Insurance Corporation obligations	E
xv. General Services Administration	E
xvi. Government National Mortgage Association (Ginnie Mae)	T
xvii. Guam	E
xviii. H.U.D./New Communities	E
xix. H.U.D. Public Housing Notes and Bonds (Tax free in State of issuance)	
(In state of issuance)	E
(1) If issued in the District of Columbia, Puerto Rico, the Virgin Islands, they are exempt from all State tax.	
(If issued in other states)	T
xx. Inter-American Development Bank Bonds	T
xxi. International Monetary Fund and Bank for Reconstruction and Development (World Bank)	T
xxii. Jonathan Development Corporation (Obligations guaranteed under New Communities Act of 1968)	T
xxiii. Merchant Marine	E
xxiv. Panama Canal Zone Bonds specifically exempt from tax by 31 USC 744 and 745	E
xxv. Production Credit Associations	E
xxvi. Puerto Rico Water Resources—4.2 per cent bonds due 1/1/89—Interest on Bonds	E
xxvii. Puerto Rico	E
xxviii. R.F.K. Stadium Bonds	T
xxix. Small Business Administration	E
xxx. Student Loan Marketing Association	E
xxxi. Tennessee Valley Authority	E
xxxii. U.S. Postal Service	E
xxxiii. U.S. Treasury	E
xxxiv. U.S. Treasury Bills	E
xxxv. USAVE Certificates—Farmers Home Administration Insured Loan Notes	Partially
xxxvi. Virgin Islands	E
xxxvii. Washington Metropolitan Area Transit Authority Bonds	T

(d) Gross income shall include interest and gains from obligations issued by or on behalf of other states of the United States, and foreign governments.

R.1978 d.284, effective August 15, 1978.  
 See: 10 N.J.R. 299(a), 10 N.J.R. 406(f).  
 Amended by R.1988 d.407, effective September 6, 1988.  
 See: 19 N.J.R. 2255(a), 20 N.J.R. 2310(c).  
 Added "State"; and (a)1i.  
 Amended by R.1992 d.141, effective March 16, 1992.  
 See: 23 N.J.R. 177(a), 24 N.J.R. 970(a).  
 Added (b); redesignated existing (b)-(c) as (c)-(d) without change.  
 Recodified from N.J.A.C. 18:35-1.9 and amended by R.1998 d.195, effective April 20, 1998.  
 See: 30 N.J.R. 612(a), 30 N.J.R. 1428(a).  
 Former N.J.A.C. 18:35-2.1, Purpose, recodified as N.J.A.C. 18:35-10.1.

**18:35-2.2 Qualified investment fund distributions**

(a) Gross income shall not include the portion of any distribution from a qualified investment fund paid on or after January 1, 1987 which is attributable to interest or gain from the following:

1. Obligations which are issued by or on behalf of New Jersey or any county, municipality, school or other district, agency, authority, commission, instrumentality, public corporation (including one created or existing pursuant to agreement or compact with this or any other state), body corporate and politic or political subdivision of New Jersey; or

2. Those obligations which are statutorily free from state or local taxation under any act of New Jersey or under the laws of the United States.

(b) Net gains or income derived from the disposition of securities which evidence ownership in a qualified investment fund are excluded from gross income.

(c) A "qualified investment fund" is any investment company registered with the Securities and Exchange Commission or any series of such investment company which, for the calendar year in which the distribution is paid:

1. Has no investments other than the following:

- i. Interest-bearing obligations;
- ii. Obligations issued at a discount; and
- iii. Cash and cash items, including receivables; and

2. At the close or each quarter of the taxable year has not less than 80 percent of the aggregate principal amount of all its investments in obligations described in (a)1 and (a)2 above.

i. The aggregate principal amount of investments shall not include cash and cash items, including receivables.

ii. For the purposes of determining aggregate principal amount, the investments of the fund shall be valued as follows:

(1) With respect to obligations for which market quotations are readily available, market value shall be used;

(2) With respect to other obligations, value shall mean the fair market value as determined in good faith by the board of directors of the investment fund.

(d) A "series" of an investment company means a segregated portfolio of assets, the beneficial interests in which are owned by the holders of a class or series of stock or shares of the investment company that is preferred over all other classes or series in respect to the portfolio of assets.

(e) The exclusions from gross income authorized by this section shall not apply to distributions of interest or gain from any qualified investment company which does not meet the following requirements:

1. The qualified investment company shall certify annually on or before February 15 to the Division of Taxation on the forms prescribed that for the preceding calendar year the investment fund is a qualified investment fund because it:

i. Was registered with the Securities and Exchange Commission;

ii. Had no investments other than interest-bearing obligations issued at a discount, and cash and cash items, including receivables; and

iii. Had not less than 80 percent of the aggregate principal amount of all its investments, excluding cash and cash items (including receivables) in obligations described in N.J.S.A. 54A:6-14 and N.J.A.C. 18:35-2.1(a)1 and 2.

(f) Subsection (e) above shall not apply with respect to distributions made for the calendar years 1987 and 1988 from an investment fund which otherwise satisfied the requirements of (c) above.

(g) Pursuant to N.J.S.A. 54A:8-6, a qualified investment fund must:

1. Advise the Division of Taxation as to amounts distributed for the preceding calendar year to shareholders or beneficiaries from income or gain derived from New Jersey and Federal obligations; and

2. Advise its shareholders on or before February 15 of each calendar year that its distributions qualify for exclusion from gross income pursuant to this section.

(h) This section applies to distributions of interest or gain from qualified investment funds which are made on or after January 1, 1987.

New Rule, R.1989 d.94, effective February 21, 1989.

See: 20 N.J.R. 742(b), 21 N.J.R. 457(a).

Recodified from N.J.A.C. 18:35-1.24 and amended by R.1998 d.195, effective April 20, 1998.

See: 30 N.J.R. 612(a), 30 N.J.R. 1428(a).

In (e)1iii, changed N.J.A.C. reference. Former N.J.A.C. 18:35-2.2, Definitions, recodified as N.J.A.C. 18:35-10.2.

**18:35-2.3 Employee accident or health insurance exclusion from taxable gross income**

(a) Amounts received by an employee through an accident or health insurance plan for personal injuries or sickness are not subject to tax under the New Jersey Gross Income Tax Act.

“spouse’s/civil union partner’s” for “spouse’s”; and in (a)5, added the last sentence.

**18:35-2.5 Pensions and annuities**

(a) An employee may defer the payment of tax on employee and employer contributions to I.R.C. 401(k) deferred compensation plans. Contributions to any other type of retirement plan including, but not limited to, plans under I.R.C. 403(b), I.R.C. 457, I.R.C. 414(h), SEP, Federal Thrift

Savings Funds or Individual Retirement Accounts must be included in gross income.

(b) Disability pensions: Pension amounts received as a result of a permanent and total disability are excludable from gross income.

1. “Permanent and total” disability means the inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment.

2. A substantial gainful activity means the performance of significant duties over a reasonable period of time while working for pay or profit, or in work generally done for pay or profit.

3. To be considered "permanent and total," a physician must certify that the condition is either expected to result in death or has lasted (or can be expected to last) continuously for at least 12 months.

4. An individual who is receiving a disability pension and is gainfully employed or working for profit does not meet the criteria of a permanent and total disability and must include this disability pension income in the gross income category of pension and annuity income.

New Rule, R.2003 d.285, effective July 21, 2003.  
See: 35 N.J.R. 1384(a), 35 N.J.R. 3386(a).

### 18:35-2.6 Qualified State Tuition Program; education individual retirement account

(a) Definition: A "qualified state tuition program" means:

1. An account established under the New Jersey Better Educational Savings Trust (NJBEST) Program; or

2. An account established under the laws of any other state as defined under section 529 of the Internal Revenue Code; or

3. A tuition credit or certificate purchased under such program.

(b) An "education individual retirement account" means an education retirement account as defined by section 530(b)(1) of the Internal Revenue Code.

(c) Upon distribution from the plan, amounts that are used for qualified higher education expenses as defined under section 529(e)(3) of the Internal Revenue Code are excluded from the taxpayer's income. Distributions from the plan that are not used for qualified higher education expenses are includible in gross income.

1. A rollover from one account to another is considered a qualified distribution if it meets the requirements of section 529(c)(3)(C)(i) or section 530(d)(5) of the Internal Revenue Code.

New Rule, R.2003 d.285, effective July 21, 2003.  
See: 35 N.J.R. 1384(a), 35 N.J.R. 3386(a).

### 18:35-2.7 Health Care Enterprise Zones

(a) Effective for taxable years of practices beginning on or after September 2, 2004, an eligible taxpayer may deduct a Health Enterprise Zone deduction from his or her gross income. To be eligible for this tax benefit, a taxpayer must be engaged in providing primary care in either:

1. A practice located within a Health Enterprise Zone; or

2. A qualified practice located in New Jersey and within five miles of a Health Enterprise Zone.

(b) Definitions. The following words and terms, as used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

"Deduction percentage" means a fraction whose numerator is the qualified receipts of the practice location or qualified practice location and whose denominator is the qualified practice location's gross receipts from services. The calculation should be rounded to three decimal places.

"Eligible taxpayer" means a taxpayer, as defined by N.J.S.A. 54A:1-2.1 that owns a qualified practice.

"Health Enterprise Zone" or "HEZ" means a municipality deemed a State-designated underserved area and designated as such by the Department of Health and Senior Services. The current list of Health Enterprise Zones is available from the Office of Primary Health Care, Division of Family Health Services via the Internet at: <http://www.state.nj.us/health/fhs/professional/workforce.shtml#psa>.

"Health Enterprise Zone Deduction" is the amount calculated pursuant to the methodology set forth in (c) below and which is deducted from an eligible taxpayer's gross income.

"Primary care" means the practice of family medicine, general internal medicine, general pediatrics, general obstetrics, gynecology, and any other areas of medicine which the Commissioner of Health and Senior Services may define as primary care. Primary care also includes the practice of general dentistry and pedodontics, as well as the professions of nurse-practitioner, certified nurse-midwife, and physician assistant. See N.J.S.A. 18A:71C-32.

"Qualified practice" means a practice location in New Jersey at which 50 percent or more of the total amounts received for services at that practice location for the taxable year are qualified receipts and 50 percent or more of the patients, whose services are compensated by qualified receipts, reside in a Health Enterprise Zone.

"Qualified receipts" means amounts received for services from the Medicaid program, including amounts received from managed care organizations under contract with the Medicaid program, the Family Care Health Coverage Program, and the Children's Health Care Coverage Program for providing health care services to eligible program recipients.

(c) Calculation of the benefit. A practice that is an electing New Jersey S Corporation or is recognized for Federal purposes as a partnership, located in, or that has a practice location in a Health Enterprise Zone or a qualified practice or practice location in New Jersey within five miles of a Health Enterprise Zone shall determine the HEZ deduction percentage and the HEZ deduction allowable. The business shall report the HEZ deduction on the NJ-K1 provided to the partners, shareholders, or members of the practice annually.

1. Sole proprietors shall determine the HEZ deduction percentage and HEZ deduction allowable annually and attach a supporting schedule to their New Jersey return.

2. A separate calculation must be made for each qualifying practice location. A location that operates at a loss is not entitled to an HEZ deduction. A practice location must meet the criteria annually to be eligible for an HEZ deduction. If a business entity has more than one practice location, the HEZ deduction, if any, for each practice location is calculated separately and then the separate amounts are totaled. The result is the taxpayer's HEZ deduction for that practice.

3. To calculate an HEZ deduction, a taxpayer shall multiply his or her net income from the practice location by the practice location's deduction percentage (the fraction made up of the practice location's qualified receipts divided by its gross receipts from services). A separate calculation must be made for each qualifying practice location, if an entity has more than one. The resulting amount or amounts are totaled and then deducted from Gross Income on the taxpayer's New Jersey Gross Income Tax Return. If a taxpayer does not receive or report taxable income from a particular location, the location does not qualify for an HEZ deduction.

(d) Accounting. Regardless of the legal, organizational form of the entity, practices and qualified practices that are affected by N.J.S.A. 54A:3-8 whether, for example, partnerships, LLCs, or S corporations are required to keep records substantiating their gross receipts, qualified gross receipts, patients' addresses, and deduction percentage calculations by location for computation and audit verification purposes. Businesses and practices that have more than one location must maintain separate books and records for each location, so that the deduction percentage and net profits from the individual locations can be determined. These separate books and records must be available to the Division of Taxation for audit and verification of the HEZ deduction.

1. HEZ deductions that cannot be utilized on an eligible taxpayer's Gross Income Tax return cannot be carried forward or back to another tax year nor are they transferable to another taxpayer.

(e) Examples.

#### Example 1

XY Medical Services, Inc., a New Jersey S Corporation, is located in a Health Enterprise Zone. It is owned by Dr. Smith and Dr. Jones who are the sole shareholders. The practice also employs two other medical doctors and two physician assistants and, on occasion, brings in a doctor who is a medical specialist.

In 2005, the practice's gross receipts were \$900,000, of which \$600,000 were qualified receipts from the New Jersey Medicaid program for providing services to qualified

recipients. The S corporation's net income for the year was \$240,000.

The S corporation, XY Medical Services, Inc., calculates its HEZ deduction percentage as follows:

$$\frac{\text{qualified receipts } \$600,000}{\text{gross receipts } \$900,000} = 66.667\%$$

XY Medical Services, Inc. then calculates the total HEZ deduction allowed for the practice, which is then allocated to its shareholders. XY Medical Services, Inc. calculates its HEZ deduction as follow:

HEZ Deduction percentage,		New Jersey S Corp Net Income,	=	\$160,000
66.667%	×	\$240,000		

The two shareholders, Drs. Smith and Jones, each own 50 percent of the practice. Their NJ-K1s, provided by the practice, reflect net pro rata share of S corporation income of \$120,000 each and an HEZ deduction of \$80,000.

Drs. Smith and Jones each report on their respective New Jersey Gross Income Tax Returns net pro rata share of S corporation income of \$120,000 and claim an HEZ deduction of \$80,000 as reflected on their respective NJ-K1's.

The physicians and physicians' assistants employed by the practice are not eligible for a deduction because they receive wages and not net income from the qualified practice.

Unless the medical specialist that XY Medical Services, Inc. brings into its location on a case-by-case basis maintains a qualified practice of his own, he does not qualify for an HEZ deduction.

#### Example 2

Dr. Johnson has a medical practice, organized as a single member LLC with two locations. Location one is within five miles of an HEZ, and location two is neither in an HEZ nor within five miles of an HEZ.

For 2005, Dr. Johnson's practice reports the following:

- Location one's gross receipts are \$200,000. Its qualified receipts are \$125,000.
- Sixty percent of location one's qualified receipts, \$75,000, are from patients living in an HEZ.
- Location one is a qualified practice because at least 50 percent of the gross receipts were qualified receipts and at least 50 percent of the qualified receipts were from patients living in an HEZ.
- Location one's HEZ deduction percentage would be 62.5 percent calculated by dividing the location's qualified receipts, \$125,000 by the location's gross receipts, \$200,000.

deducted can reasonably be expected to be \$18,000 or more for a semiannual period, a seasonal employer shall file semi-monthly employer returns with payment of the taxes withheld as provided under this section. If no tax was withheld during a particular month, a return is still required to be filed for such month with the reason for nonwithholding stated on the back, the date of the last payment of wages, and the date when the employer expects to resume paying taxes.

Recodified from N.J.A.C. 18:35-1.10 and amended by R.1998 d.195, effective April 20, 1998.

See: 30 N.J.R. 612(a), 30 N.J.R. 1428(a).

In (h), changed N.J.A.C. reference.

Amended by R.2006 d.327, effective September 18, 2006.

See: 38 N.J.R. 2402(a), 38 N.J.R. 3919(a).

Recodified (e) through (h) as (g) through (j); and added new (e) and (f).

#### 18:35-7.4 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 10 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, subject to the following exception: if such similar treatment under Federal law were disallowed due to the civil union status of the employee, the employee shall nevertheless be allowed to receive the same State tax treatment as if he or she were married.

(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).

Recodified from N.J.A.C. 18:35-1.1 by R.1998 d.195, effective April 20, 1998.

See: 30 N.J.R. 612(a), 30 N.J.R. 1428(a).

Amended by R.2008 d.42, effective March 3, 2008.

See: 39 N.J.R. 4559(a), 40 N.J.R. 1373(b).

In (a), substituted "10" for "ten" and inserted ", subject to the following exception: . . . as if he or she were married".

#### 18:35-7.5 Gambling winnings subject to withholding

(a) Every payor of New Jersey gambling winnings which are subject to withholding, as defined in (d) below, shall

deduct and withhold New Jersey gross income tax thereon in an amount equal to three percent of payments made to both New Jersey residents and nonresidents as defined in N.J.S.A. 54A:1-2(m) and (n). Such withholding shall be required in all instances wherein the payor of such winnings is required to withhold for Federal income tax purposes under subsection (q) of section 3402 of the Federal Internal Revenue Code of 1986 (26 U.S.C. § 3402), as amended.

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

1. With respect to the payment of winnings from the New Jersey Lottery; and

2. With respect to a payment of winnings from a slot machine, or a keno or bingo game.

(c) Any person receiving a payment of New Jersey gambling winnings subject to withholding must furnish the payor a statement made under the penalties of perjury containing:

1. The name, address, and taxpayer identification (social security) number of the winner accompanied by a declaration that no other person is entitled to any portion of such payment; or

2. The name, address, and taxpayer identification (social security) number of the recipient and of every person entitled to any portion of such payment.

3. The requirement set forth in (c)1 and 2 above may be satisfied by providing the payor with a copy of Federal Form W-2G or 5754, whichever is applicable.

(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. Any other wagering transaction, including but not limited to, a wagering transaction in a parimutuel pool with respect to horse races, but only if the proceeds from the wager:

- i. Exceed \$1,000; and

- ii. Are at least 300 times as large as the amount of the wager.

3. If proceeds from a wager as set forth in (d)1 and 2 above qualify as winnings subject to withholding, then the total proceeds from the wager, and not merely amounts in excess of \$1,000, are subject to withholding.

(e) Proceeds from a wager is the amount paid with respect to a wager, less the amount of the wager. Amounts paid with respect to identical wagers are treated as paid with respect to a single wager for purposes of calculating the amount of proceeds from a wager.

1. In determining the amount paid with respect to a wager, proceeds which are not money shall be taken into account at the fair market value.

2. Periodic payments, including installment payments or payments which are to be made periodically for the life of a person, are aggregated for purposes of determining the proceeds from a wager. The aggregate amount of period payments to be made for a person's life shall be based on the person's life expectancy. For purposes of determining the amount subject to withholding, the first periodic payment shall be reduced by the amount of the wager.

(f) Payments to any person of winnings subject to withholding under this section shall be treated as if they are wages paid by an employer to an employee under the provisions of N.J.S.A. 54A:7-2 through N.J.S.A. 54A:7-7; provided, however, that such payments shall be considered gambling winnings for all other purposes under the Gross Income Tax Act (N.J.S.A. 54A:1-1 et seq.).

New Rule, R.1988 d.407, effective September 6, 1988.

See: 19 N.J.R. 2255(a), 20 N.J.R. 2310(c).

Recodified from N.J.A.C. 18:35-1.20 by R.1998 d.195, effective April 20, 1998.

See: 30 N.J.R. 612(a), 30 N.J.R. 1428(a).

#### 18:35-7.6 Filing of withholding returns by professional athletic teams

Any "professional athletic team" (as defined by N.J.A.C. 18:35-5.1(b)1) which pays compensation to a resident or nonresident individual for services rendered to the team within New Jersey shall be deemed to be an "employer" and shall be required to withhold New Jersey gross income tax return from that portion of the compensation attributable to "duty days" spent in New Jersey, as defined in N.J.A.C. 18:35-5.1(b)3.

Recodified from N.J.A.C. 18:35-1.22(c) and amended by R.1998 d.195, effective April 20, 1998.

See: 30 N.J.R. 612(a), 30 N.J.R. 1428(a).

Changed N.J.A.C. references.

#### 18:35-7.7 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 (g) below showing the cost of commuter transportation benefits paid by the employer to the employee.

(b) Employer-provided commuter transportation benefits for using an alternate form of commuting (such as public transportation, carpools, etc.) are excluded from New Jersey gross income up to and including the limit per taxable year per employee. The limit per taxable year is as follows:

1. \$720.00 for the taxable years beginning on and after January 1, 1993 but before January 1, 1994;
2. \$735.00 for the taxable years beginning on and after January 1, 1994 but before January 1, 1995;

3. \$735.00 for the taxable years beginning on and after January 1, 1995 but before January 1, 1996;

4. \$755.00 for the taxable years beginning on and after January 1, 1996 but before January 1, 1997;

5. \$1,000 for the taxable years beginning on and after January 1, 1997 but before January 1, 1998;

6. \$1,105 for the taxable years beginning on and after January 1, 1998 but before January 1, 1999;

7. \$1,120 for the taxable years beginning on and after January 1, 1999 but before January 1, 2000;

8. \$1,145 for the taxable years beginning on and after January 1, 2000 but before January 1, 2001;

9. \$1,175 for the taxable years beginning on and after January 1, 2001 but before January 1, 2002;

10. \$1,200 for the taxable years beginning on and after January 1, 2002; and

11. In the case of any taxable year beginning in a calendar year after 2002, the Director shall adjust the limit for inflation in parallel with the adjustment pursuant to paragraph (6) of subsection (f) of section 132 of the Federal Internal Revenue Code of 1986, 26 U.S.C. § 132, so that the taxable year limit pursuant to this paragraph is equal to 12 times the adjusted Federal monthly limit pursuant to subparagraph (A) of paragraph (2) of subsection (f) of section 132 of the Federal Internal Revenue Code of 1986.

(c) The income tax exclusion shall not apply to any commuter transportation benefit unless such benefit is provided in addition to and not in lieu of any compensation otherwise payable to the employee.

(d) State and local government employers may offer qualified transportation fringe benefits to their own employees as an employee set-aside program. The State and local employees shall choose to have the benefit deducted from their salary, receive any combination of benefits or continue to receive the amount as salary. The amount of any reduction will continue to be treated as regular compensation including the calculation of pension contributions and the amount of any retirement allowance, but, to the extent permitted under the Federal Internal Revenue Code as extended under the Federal Transportation Equity Act for the 21st Century (Title IX of Pub.L. 105-178), will not be included in the computation of Federal taxes withheld from the employee's salary.

(e) Qualified parking, as provided under IRC Section 132, at or near the employer's business premises or a location from which the employee commutes to work by mass transit or hired commuter vehicle is excludible for New Jersey gross income tax purposes. Commuter transportation benefits also includes the cost of parking by employees at park-and-ride lots. Any parking on or near the employer's residence is not qualified parking.

1. Acceptance of the cash value of qualified parking on the part of one employee of an employer in place of qualified parking fringe benefits provided to the other employees of the employer in addition to and not in lieu of compensation, shall not cause the qualified parking fringe to become a taxable benefit for employees who did not accept the cash value.

(f) Notice of the adjusted limit shall be published in the New Jersey Register.

(g) 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 1995.  
 See: 28 N.J.R. 2639(a).  
 Public Notice: Commuter transportation benefit limit for 1996.  
 See: 28 N.J.R. 5510(a).  
 Public Notice: Commuter transportation benefit limit for 1996.  
 See: 29 N.J.R. 813(c).  
 Recodified from N.J.A.C. 18:35-1.28 by R.1998 d.195, effective April 20, 1998.  
 See: 30 N.J.R. 612(a), 30 N.J.R. 1428(a).  
 Public Notice: Commuter transportation benefit limit for 1998.  
 See: 30 N.J.R. 2533(a).  
 Public Notice: Commuter transportation benefit limit for 1999.  
 See: 31 N.J.R. 1112(b).  
 Public Notice: Commuter transportation benefit limit for 2000.  
 See: 32 N.J.R. 1088(a).  
 Public Notice: Commuter transportation benefit limit for 2001.  
 See: 33 N.J.R. 903(b).  
 Public Notice: Commuter transportation benefit limit for 2002.  
 See: 34 N.J.R. 1058(a).  
 Public Notice: Commuter transportation benefit limit for 2002.  
 Corrected inflation adjustment.  
 See: 34 N.J.R. 1749(b).  
 Public Notice: Commuter transportation benefit limit for 2003.  
 See: 35 N.J.R. 1963(b).  
 Amended by R.2003 d.285, effective July 21, 2003.  
 See: 35 N.J.R. 1384(a), 35 N.J.R. 3386(a).  
 Rewrote the section.  
 Public Notice: Commuter Transportation Benefit Limits Inflation Adjustments.  
 See: 36 N.J.R. 1838(a).  
 Public Notice: Notice of Commuter Transportation Benefit Limits Inflation Adjustments.  
 See: 37 N.J.R. 1895(c).  
 Public Notice: Division of Taxation: Commuter transportation benefit limits inflation adjustments.  
 See: 38 N.J.R. 1477(b).  
 Public Notice: Commuter transportation benefit limits inflation adjustments.  
 See: 39 N.J.R. 1827(b).  
 Public Notice: Commuter transportation benefit limits inflation adjustments.  
 See: 40 N.J.R. 3329(a).

### 18:35-7.8 Information of employer withholding from new employees

(a) The New Jersey Economic Development Authority shall submit data to the Director no later than April 1 of each year, for the preceding grant year, setting forth information regarding businesses applying for a grant under either the Business Employment Incentive Program Act (P.L. 1996, c.26) or the Business Relocation Assistance Act (P.L. 1996, c.25) (both referred to as "Act"). This information shall set forth the following relative to said business.

1. A list of the names, job titles and job locations of existing employees of said business not subject to a grant under the Act;
2. A list of the names and date hired and/or the date each new employee began employment at the project of said business in an eligible position for grant purposes under the Act, their base salary, overtime and bonuses paid, and the amount of New Jersey gross income tax withheld from each new employee and their city and state of residence;

3. The aggregate amount of payroll and withholdings for all employees in New Jersey;
4. The percentage and term of any grant pursuant to the Business Employment Incentive Program Agreement;
5. The amount of the grant to be disbursed to the business pursuant to the Business Relocation Assistance Act requiring the Treasurer's certification and the percentage upon which the grant is based;
6. The percentage and term of the grant to be disbursed to the business pursuant to the Business Employment Incentive Program Agreement requiring the Treasurer's certification;
7. A statement as to whether the applicant business has followed the criteria as set forth in guidelines promulgated by Economic Development Authority under the Act; and
8. A list of eligible positions that have been filled by persons who are rehired from a bona fide layoff or transferred from another company.

(b) The Director, upon receipt of the information referred to in (a) above, shall send to each business awarded a grant under the Act, a Declaration of Annual Withholding Information for Purposes of the Business Employment Incentive Program, Form NJ-9000, to be completed and returned not later than May 7 to New Jersey Division of Taxation c/o EDA, PO Box 990, Trenton, NJ 08625-0990.

(c) Form NJ-9000 shall consist of a certification setting forth:

1. The number of new employees, as referred to in (a)2 above, together with their city/state residence, base salary, overtime and bonuses paid to them, withholding tax paid for each new employee during the preceding grant year and date hired or transferred. Each business shall also submit a copy of each Federal W-2 form for all said new employees;
2. The aggregate amount of payroll and withholdings for all employees in New Jersey; and
3. The amount and type of each grant, other than a grant under the Act, that the applicant business received by operation of State law during the preceding grant year.

(d) Each business shall annually submit to the Division of Taxation a Release Authorization authorizing the Division of Taxation to review the businesses tax history to determine if there are any tax delinquencies.

(e) Upon receipt of Form NJ-9000 from the business, the Director shall certify to the Treasurer, who in turn will certify to the New Jersey Economic Development Authority, the aggregate amount, as set forth on Form NJ-9000, of the withholdings received in that year from the business for new employees in eligible positions under the Act and whether same equals or exceeds the amount of the proposed grant to be given to said business under the Act.

(f) The Director shall also verify to the New Jersey Economic Development Authority on an annual basis any outstanding tax delinquencies for each business awarded a grant under the Act.

(g) The issuance of the certifications by the Division as set forth in (d) above is conditional upon the receipt by the Director of proper information as set forth on Form NJ-9000.

Recodified from N.J.A.C. 18:35-3.1 by R.1998 d.195, effective April 20, 1998.

See: 30 N.J.R. 612(a), 30 N.J.R. 1428(a).

Administrative change.

See: 34 N.J.R. 1425(b).

**18:35-7.9 Treasurer's approval of a business to receive a grant from both the Business Employment Incentive Program Act and the Business Relocation Assistance Act**

(a) In determining whether to recommend the approval or disapproval of a business to receive a grant under both the Business Employment Incentive Program Act and the Business Relocation Assistance Act, the Treasurer shall consider the following criteria:

1. The number of eligible positions created for new employees and the expected duration of those positions;
2. The total number of existing employees of the business;
3. The type of contribution the business can make to the long term growth of the State's economy;
4. The total dollar investment the business is contributing to the project;
5. The type of industry that the business is involved in;
6. The location of the project;
7. The type of jobs to be created and the associated wages; and
8. Such other factors as are presented by a specific applicant.

(b) In determining whether to recommend the approval or disapproval of a business receiving a grant under either the Business Employment Incentive Program Act or the Business Relocation Assistance Act and any other grant under operation of State law, which, when combined, exceeds 80 percent of its withholdings, the Treasurer shall consider the same criteria set forth in (a) above.

Recodified from N.J.A.C. 18:35-3.2 by R.1998 d.195, effective April 20, 1998.

See: 30 N.J.R. 612(a), 30 N.J.R. 1428(a).

**18:35-7.10 Domestic employees**

(a) Employers of domestic workers shall report and remit gross income tax withholding and unemployment and dis-

ability insurance for these employees on an annual basis on Form NJ-927H, the Employer's Annual Report.

(b) A domestic worker is considered to be an employee working in the private home of an employer; such domestic workers include, without limitation: a babysitter, nanny, health aide, nurse, maid or yard worker, etc.

(c) Effective January 1, 2001, employers of domestic workers must file the "Employer Report of Wages Paid" (Form WR-30) on an annual basis. For the calendar year ending December 31, the report would be due January 31 following the closing of the calendar year.

(d) The following concern taxpayer identification numbers:

1. Employers having both domestic employees and business employees shall have two separate taxpayer identification numbers—one for domestic employees and the other for business employees. Such employers file using Form NJ-927H for their domestic employees and Form NJ-927 for their business employees.
2. If the employer is a sole proprietor and files under one taxpayer identification number, the employer is permitted to combine both the domestic employees and the business employees on Form NJ-927 and file it quarterly.

New Rule, R.2003 d.285, effective July 21, 2003.

See: 35 N.J.R. 1384(a), 35 N.J.R. 3386(a).

**SUBCHAPTER 8. INFORMATION RETURNS**

**18:35-8.1 Information furnished at source; 1977 and subsequent returns**

(a) Under N.J.S.A. 54A:1-1 et seq., information returns which shall include the amounts paid to or credited to the accounts of all recipients for any calendar year beginning with January 1, 1977, are required to be provided to the Director, New Jersey Division of Taxation, by:

1. Payers of interest and dividends, including banks, savings and loan associations, building and loan associations, and savings banks; and
2. All payers including those who are required to file Federal Internal Revenue Service form 1099 or any of the form 1099 designations, which shall include lessees or mortgagors of real or personal property, fiduciaries, employers, and all officers and employees of this State, or of any municipal corporation or political subdivision of this State, having the control, receipt, custody, disposal or payment of interest, rents, salaries, wages, premiums, annuities, compensations, remunerations, emoluments or other fixed or determinable gains, profits or income, except interest coupons payable to bearer.

(b) Such information returns must be filed on or before February 15 following the close of each calendar year, with the Division of Taxation, PO Box 248, Trenton, New Jersey 08646-0248, where the amount paid or credited is \$1,000 or more.

(c) The requirements of (b) above shall be satisfied by providing the Director with any of the following, with preference in the order listed below:

1. A copy of the magnetic tape provided to the Internal Revenue Service (with the same specifications) in lieu of forms 1099 for the full calendar year, edited to delete all listings of recipients of less than \$1,000; or
2. A copy of the tape provided to the Internal Revenue Service (as above) without deleting recipients of less than \$1,000; or
3. Copies of all forms 1099 submitted to the Internal Revenue Service for the full calendar year on amounts of \$1,000 or more (either an additional carbon or photocopy of the form 1099); or
4. Copies of all forms 1099 submitted to the Internal Revenue Service for the full calendar year.

(d) Beginning with real estate transactions occurring after December 31, 1995, each person required to report the proceeds from real estate transactions to the Internal Revenue Service on Federal Form 1099-S (or any other form which the Internal Revenue Service may designate) pursuant to Section 6045(e) of the Federal Internal Revenue Code is required to submit all such reports to the Division of Taxation when the real estate being sold or exchanged is partially or entirely located in New Jersey.

1. All information returns required by this subsection must be filed on or before February 15 following the close of each calendar year, beginning with February 15, 1997. Information returns attributable to real estate transactions must be sent to: Division of Taxation, PO Box 187, Trenton, New Jersey 08646-0187, where the amount paid or credited is \$1,000 or more.
2. If any person required to file information returns under this subsection is also required to submit information returns pursuant to (b) above, such person shall send the information returns attributable to real estate transactions to the address specified in (d)1 above, and shall send all other information returns to the address specified in (b) above.

(e) The requirements of (d) above shall be satisfied by providing the Director with any of the following, with preference in the order listed below:

1. A copy of the magnetic tape provided to the Internal Revenue Service (with the same specifications) in lieu of forms 1099-S for the full calendar year, edited to delete all listings of real estate transactions with gross proceeds of less than \$1,000;

2. A copy of the tape provided to the Internal Revenue Service (as above) without deleting real estate transactions with gross proceeds of less than \$1,000;

3. Copies of all forms 1099-S submitted to the Internal Revenue Service for the full calendar year for real estate transactions with gross proceeds of \$1,000 or more (either an additional carbon or photocopy of the form 1099-S); or

4. Copies of all forms 1099-S submitted to the Internal Revenue Service for the full calendar year.

R.1977 d.460, effective December 6, 1977.

See: 10 N.J.R. 45(a).

Amended by R.1996 d.550, effective December 2, 1996.

See: 28 N.J.R. 2517(a), 28 N.J.R. 5079(b).

Recodified from N.J.A.C. 18:35-1.8 and amended by R.1998 d.195, effective April 20, 1998.

See: 30 N.J.R. 612(a), 30 N.J.R. 1428(a).

## SUBCHAPTER 9. INTEREST AND PENALTIES

### 18:35-9.1 Negligence and fraud penalties

(a) If any part of a deficiency is due to the taxpayer's negligence or an intentional disregard of any provision of the Gross Income Tax Act (N.J.S.A. 54A:1-1 et seq.) or the rules applicable thereto, there shall be added to the tax, penalties and interest as provided for in State Tax Uniform Procedure Law plus an amount equal to 10 percent of the deficiency, provided however that there was no intent to defraud.

(b) If a deficiency is assessed against a taxpayer and it is determined that any part of such assessment is due to civil fraud, there shall be added to the tax an amount equal to 50 percent of the assessment. This addition to the tax shall be in lieu of any other additions to the tax imposed for late filing and nonpayment of special assessment as provided for in N.J.S.A. 54:49-9.

Emergency New Rule, R.1986 d.169, effective April 15, 1986 (expires May 15, 1986).

See: 18 N.J.R. 999(a).

Public Notice: This rule Extension of time to file a residential property tax credit application expired May 15, 1986.

See: 19 N.J.R. 890(b).

New Rule, R.1988 d.407, effective September 6, 1988.

See: 19 N.J.R. 2255(a), 20 N.J.R. 2310(c).

Recodified from N.J.A.C. 18:35-1.19 by R.1998 d.195, effective April 20, 1998.

See: 30 N.J.R. 612(a), 30 N.J.R. 1428(a).

### 18:35-9.2 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.

## SUBCHAPTER 11. FILING FEE PAYMENTS BY PARTNERSHIPS

### Authority

P.L. 2002, c.40, § 25; and N.J.S.A. 54:10A-27, 54:50-1 and 54A:9-17(a).

### Source and Effective Date

R.2003 d.370, effective August 22, 2003.  
See: 35 N.J.R. 1573(a), 35 N.J.R. 4310(a).

### Subchapter Expiration Date

Subchapter 11, Filing Fee Payments by Partnership, expires on June 20, 2008.

### Subchapter Historical Note

Subchapter 11, Filing Fee Payments by Partnerships, was adopted as Special Adopted and Concurrent Proposed New Rules by R.2003 d.135, effective February 17, 2003 (to expire August 26, 2003). See: 35 N.J.R. 1573(a).

The concurrent proposal of Subchapter 11, Filing Fee Payments by Partnerships, was adopted by R.2003 d.370, effective August 22, 2003. See: Source and Effective Date. See, also, section annotations.

## 18:35-11.1 Definitions

For the purposes of this subchapter only, the following terms shall have the following meanings:

“Common trust fund” means a fund maintained by a bank, which fund is subject to Internal Revenue Code Section 584 and which is free from New Jersey taxation pursuant to N.J.S.A. 17:9A-44.

“Income” means income, loss, gain, or expense.

“Partner” means, and includes without necessarily being limited thereto, each entity that receives a K-1 or NJ-K1 from a partnership. For the purposes of this section, a “partner” refers to the definition in this section, although a “partner” can at the same time also be a partner in a civil union.

“Partnership” means any entity classified as a partnership for Federal income tax purposes. The term includes, but is not limited to, a general partnership, a limited liability partnership, a limited partnership, a family limited partnership, and a limited liability company. The term includes partnerships whose members receive nontaxable income pursuant to N.J.S.A. 54A:5-8(c), commonly referred to as hedge funds and qualified investment partnerships as defined in N.J.S.A. 54:10A-4(r). However, the term does not include investment clubs or common trust funds. For the purposes of this section, a “partnership” shall not mean partners of a civil union couple.

“Investment club” means an entity that is classified as a partnership for Federal income tax purposes and, all of whose owners are individuals. All of the entity’s assets must be securities, cash, or cash equivalents, and its assets must be valued on a consistent basis at the lower of cost or fair market value. In calculating assets for a privilege period, a quarterly

average must be used, and the total value must be less than \$60,000. See also N.J.A.C. 18:35-1.3. To illustrate, an investment club is formed when a group of friends, neighbors, business associates, or others pool their money to invest in stock or other securities. The club may or may not have a written agreement, a charter, or bylaws.

Usually the group operates informally, with members pledging to pay a regular amount into the club, monthly. Some clubs have a committee that gathers information on securities, selects the most promising securities, and recommends that the club invest in them. Other clubs rotate these responsibilities among all their members. Most clubs require all members to vote for or against all investments, sales, trades, and other transactions.

Amended by R.2008 d.42, effective March 3, 2008.

See: 39 N.J.R. 4559(a), 40 N.J.R. 1373(b).

In definitions “Partner” and “Partnership”, added the last sentences.

## 18:35-11.2 Apportionment of the partnership fee

(a) For privilege periods beginning on or after January 1, 2002 each partnership, regardless of any Internal Revenue Code 761(a) election, having income derived from New Jersey sources that has more than two owners shall make a payment of a filing fee of \$150.00 for each owner of an interest in the entity, provided that the payment shall not exceed \$250,000.

(b) If a partnership includes nonresident partners, some of whom have physical nexus with New Jersey and some of whom do not, then an apportionment methodology for the partnership filing fee may be used, provided that the partnership has an office outside New Jersey.

(c) The total apportioned partnership fee is equal to the sum of:

1. The number of resident partners multiplied by \$150.00; plus
2. The number of nonresident partners with physical nexus to New Jersey multiplied by \$150.00; plus
3. The number of nonresident partners without physical nexus to New Jersey multiplied by \$150.00 and the resulting product multiplied by the corporate allocation factor of the partnership.
  - i. The corporate allocation factor includes property, payroll and double weighted receipts fractions.
  - ii. For purposes of this section only, if one or both of the fractions are missing in the allocation factor, or if a partnership is unable to allocate because it lacks an office outside the State, the partnership may allocate its nonresident partners without nexus using the receipts fraction only.

Amended by R.2003 d.370, effective September 15, 2003.

See: 35 N.J.R. 1573(a), 35 N.J.R. 4310(a).

Added (c)3ii.

**18:35-11.3 Annual return; payment of tax or fee due; extensions of time to file tentative return; estimated payment**

(a) A partnership having a resident New Jersey owner of an interest in the entity or having any income derived from New Jersey sources is required to file a partnership return Form NJ-1065 on or before the 15th day of the fourth month after the end of the tax year. See N.J.A.C. 18:35-1.3.

(b) Any partnership having a liability for a filing fee payment pursuant to N.J.S.A. 54A:8-6 or having tax due pursuant to N.J.S.A. 54:10A-15.11 must file Form PART-100, "Partnership Return Voucher," and Form NJ-1065. The applicable payment must accompany Form PART-100. Form PART-100 must be postmarked on or before the original due date for the return.

(c) A partnership seeking an extension of time to file NJ-1065 may file a copy of its application for a Federal extension with its New Jersey return. The box at the top of Form NJ-1065 labeled "Application for Federal Extension is attached" shall be checked. If a Federal extension has not been obtained, a request for a State extension may be made by filing Federal Form 8736 or 8800 with the Division of Revenue on or before the due date of the State return. In addition, Form Part 200 T, "Partnership Tentative Return and Application for Extension of Time to File," must be postmarked on or before the original due date of the return. An extension of time to file Form NJ-1065 does not extend the time to pay the filing fee or tax due. It also does not extend the time for filing the tax return or returns of the partners.

**18:35-11.4 Installment payment**

(a) Each entity required to make a payment of the partnership filing fee shall, on or before the 15th day of the fourth month of its fiscal year, make an installment payment of its filing fee for the succeeding return period. The amount of the installment payment is 50 percent of the amount required to be paid for the current fiscal year.

(b) In the year a partnership dissolves a 50 percent repayment of the filing fee liability for the succeeding year is not required.

1. For example, if a partnership having a taxable year beginning on or after January 1, 2002 dissolves during the calendar year 2002, the 50 percent prepayment of the \$150.00 per partner filing fee for the 2003 year is not required, provided the partnership properly marks its 2002 Form NJ-1065 signifying it is a final return.

**18:35-11.5 Penalty and interest**

For purposes of tax administration, tax and filing fees are payments subject to the provisions of the State Uniform Tax Procedure Law, N.J.S.A. 54:48-1 et seq. Unless such provisions are superceded by specific sections of the Gross Income Tax Act such as N.J.S.A. 54A:9-5 and 54A:9-6, col-

lection of the tax and filing fee shall be enforced pursuant to the terms of that Act, including, without limitation thereto, penalty and interest and cost of collection provisions.

**18:35-11.6 Partnership examples of the imposition of the filing fee**

(a) The following are examples of the application of the filing fee to a variety of situations.

Example 1: A limited partnership operates a profitable shopping center in Middlesex County, New Jersey. It has 20 partners. All reside in New Jersey. The partnership is liable for a partnership filing fee of \$3,000 (20 x \$150.00) plus an installment payment of 50 percent of the current year's fee (\$1,500) for the succeeding year.

Example 2: A Connecticut partnership with an office in New Haven sells small tables. Ten partners reside in New Jersey and ten reside in Connecticut. The New Jersey customers of the business purchase \$200,000 worth of tables per year. Four Connecticut partners remain outside New Jersey, but six Connecticut resident partners work in the partnership's New Jersey office.

Since the partnership includes nonresident partners, the apportionment methodology for the partnership filing fee may be used. The partnership's allocation factor is assumed to be 0.4.

The fee is calculated as follows:

The number of New Jersey resident partners is multiplied by \$150.00.

$$10 \times \$150.00 = \$1,500$$

The number of nonresident partners with physical nexus with New Jersey multiplied by \$150.00.

$$6 \times \$150.00 = \$900.00$$

The number of nonresident partners without physical nexus to New Jersey is multiplied by \$150.00 and the result is multiplied by the allocation factor.

$$4 \times \$150.00 = \$600.00$$

$$\$600.00 \times 0.4 = \$240.00$$

The total fee for 2002 is:

$$\$1,500 + \$900.00 + \$240.00 = \$2,640$$

The prepayment for 2003 is

$$\$2,640 \times 50 \text{ percent} = \$1,320$$

Example 3: A limited partnership, East, L.P., is organized and has an office in New Jersey. It has 10 limited partners and two general partners. One of the limited partners is a California limited partnership, West, L.P., having 15 partners all of whom are based in an office in Los Angeles. Certain