

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

Chapter 35, New Jersey Gross Income Tax, expires on June 20, 2008.

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: Source and Effective Date. See, also, section annotations.

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.

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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-

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

SUBCHAPTER 2. EXCLUDABLE INCOME

**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:

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).

SUBCHAPTER 3. ESTIMATED TAX

18:35-3.1 Estimated tax

(a) Every resident and nonresident individual shall make a declaration of the individual's estimated New Jersey personal income tax for each taxable year beginning after June

30, 1976, if the individual's estimated New Jersey personal income tax can reasonably be expected to be more than \$400.00 in excess of any credits allowable against the individual's tax, whether or not the individual is required to file a Federal declaration of estimated tax for such year. Estates and trusts are required to file declarations of estimated tax, other than estates and trusts that meet the two year limitation and other criteria of Internal Revenue Code section 6654(l).

(b) The term "estimated tax" means the amount which an individual estimates to be the individual's income tax under the Gross Income Tax Act for the taxable year, less the amount which the individual estimates to be the sum of any credits allowable against the tax.

(c) N.J.S.A. 54A:8-4(d) requires individuals, other than farmers, who can reasonably expect their New Jersey personal income tax to be more than \$400.00 in excess of any credits allowable against the individual's tax, to file a declaration of estimated tax on or before April 15 of the taxable year. N.J.S.A. 54A:8-4(d) also divides the remainder of the taxable year into three periods. If during the period the individual becomes subject to the Gross Income Tax, for example as a part-year resident, or it becomes apparent that the individual's (other than farmer's) personal income tax for the taxable year can reasonably be expected to be more than \$400.00 in excess of any credits allowable against the individual's tax, a declaration of estimated tax must be filed on or before the due date for the period. The periods and due dates are as follows:

1. After April 1 and before June 2 of the taxable year: June 15;
2. After June 1 and before September 2: September 15;
3. After September 1 of the taxable year; January 15 of the succeeding year.

Fiscal year taxpayers shall estimate their tax for the period covered by their fiscal year, and file a declaration of estimated tax on the 15th day of the fourth, sixth or ninth month of their fiscal year or the first month after the end of their fiscal year.

(d) A declaration of estimated tax of an individual having an estimated New Jersey income from farming (including oyster farming) for the taxable year which is at least two-thirds of the individual's New Jersey estimated income for the taxable year may be filed at any time on or before January 15 of the succeeding year.

(e) A declaration of estimated tax of an individual having a total estimated tax for the taxable year of \$400.00 or less may be filed at any time on or before January 15 of the succeeding year.

(f) N.J.S.A. 54A:8-5(a) requires payment of estimated tax in equal installments on due dates related to when the individual filed the declaration of estimated tax pursuant to (c) above. The due dates are as follows:

1. If the declaration is filed on or before April 15, installments are due on or before April 15 (with the filing of the declaration), June 15, September 15, January 15.

2. If the declaration is filed after April 15 and not after June 15: the first installment is due with filing of declaration, and the second and third installments are due on or before the following September 15 and January 15.

3. If the declaration is filed after June 15 and not after September 15, and is not required to be filed on or before June 15, the first equal installment is due with the filing of the declaration and the second equal installment is due on or before the following January 15.

4. If the declaration is filed after September 15, and is not required to be filed on or before September 15, the estimated tax is due in full at the time of the filing of the declaration.

5. If the declaration is filed late, all the installments that would have been due if the declaration was filed on time shall be paid with the filing of the declaration, and the remaining installments are due on the dates they would have been due if the declaration had been filed on time.

(g) An individual may amend a declaration of estimated tax if the individual experiences an unanticipated increase or decrease in income, credits, exemptions or deductions. If an amendment of a declaration is filed, any remaining installments shall be ratably increased or decreased to reflect any increase or decrease in the estimated tax. If any amendment is made after September 15 of the taxable year, any increase in the estimated tax shall be paid at the time of making such amendment. To amend a declaration, the individual should indicate any necessary changes when filing the next quarterly return. Form 2210 must be filed with the Gross Income Tax return showing that declarations and payments properly reflect the receipt of income.

Example 1: A taxpayer (wage earner) sells an investment in the third quarter. The proper amount of tax has been withheld from taxpayer's wages. The taxpayer pays the tax related to the sale of the investment with the third quarter declaration of estimated tax and files Form NJ-2210 with his or her final return. No estimated interest is due.

(h) If on or before February 15 of the succeeding taxable year an individual files his or her return for the taxable year for which the declaration is required, and pays the full amount of the tax shown to be due on the return:

1. Such return shall be considered as his or her declaration if no declaration was required to be filed during the taxable year, but is otherwise required to be filed on or before January 15;

2. Such return shall be considered as the amendment permitted by N.J.S.A. 54A:8-4(g) to be filed on or before January 15 if the tax shown on the return is greater than the estimated tax shown in a declaration previously made.

i. Any amount overpaid and appearing on the face of the return NJ-1040 for the immediate preceding year may be applied in lieu of any payment of estimated tax otherwise due under this section where the taxpayer indicates on the face of such return that he or she elects to have such overpayment so applied. Such amount will be considered to be a payment of the first installment of the estimated tax for the next succeeding year unless the taxpayer designates otherwise on the face of the return for the year in which the overpayment was made. The taxpayer may apply the credit partially or fully to any installment. The taxpayer may divide the credit evenly so that the installment payments are also equal. When applying the credit, the taxpayer should subtract the amount of the credit being applied from the installment amount due for the period, then remit the balance. When completing the estimated tax voucher, Form NJ-1040-ES, the taxpayer should indicate only the amount actually remitted.

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

18:35-3.2 Failure to file declaration or underpayment of estimated tax

(a) 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, the taxpayer shall be deemed to have made an underpayment of estimated tax.

(b) N.J.S.A. 54A:9-6(c) imposes an addition to tax on an underpayment of any installment of estimated tax by an individual. The amount of the underpayment for any installment is the excess of the lesser of:

1. The amount of the installment which would be required to be paid if all installment payments were equal to 80 percent of the tax (two-thirds of the tax for farmers) shown on the return for the taxable year; or

2. One hundred percent of the tax shown on the return for the previous taxable year, over the amount, if any, of the installment paid on or before the last day prescribed for such installment.

(c) N.J.S.A. 54A:9-6(c) requires that each underpayment shall bear interest at the rate imposed under the State Tax Uniform Procedure Law, N.J.S.A. 54:48-1 et seq. (for tax first due or deficiencies first assessed on or after July 3, 1993, three percent above the prime rate assessed for each month or fraction thereof, compounded annually from the date the tax was originally due and payable until the date of payment). Interest is determined at the annual rate referred to above based on the amount of the underpayment of any installment of estimated tax for the period from the date such installment was required to be paid until the 15th day of the fourth month following the close of the taxable year, or the date such underpayment was received by the Director, whichever is earlier.