

R.1979 d.433, effective October 26, 1979.
See: 11 N.J.R. 525(b), 11 N.J.R. 650(b).
As amended, R.1983 d.618, effective January 17, 1984.
See: 15 N.J.R. 1566(a), 16 N.J.R. 149(a).

Section substantially amended.

Recodified from N.J.A.C. 18:35-1.12 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.2003 d.285, effective July 21, 2003.
See: 35 N.J.R. 1384(a), 35 N.J.R. 3386(a).

Rewrote the section.

Case Notes

Rule upheld against equal protection challenge; credit for New York state personal income tax found to have exhausted New Jersey tax on taxpayer's New York income, notwithstanding that the taxpayer was also subject to New York City earnings tax. *Jenkins v. Taxation Div. Director*, 4 N.J.Tax 127, 184 N.J.Super 402, 446 A.2d 217 (Tax Ct.1982).

Rule interpreting "resident credit" as requiring exclusion for income which is excluded or deducted from taxable gross income by another jurisdiction held valid; application of 1979 rule to 1976 tax return held proper. *Sorensen v. Director, Div. of Taxation*, 2 N.J.Tax 470, 184 N.J.Super 393, 446 A.2d 213 (Tax Ct.1981).

Net gain from partnership activities taxed by foreign jurisdictions but completely offset by allowable partnership loss deductions in state; not included in numerator of tax credit fraction. *Kanarek v. Director, Div. of Taxation*, 14 N.J.Tax 589 (1995).

In calculating credit fraction numerator, gross income subject to tax in other jurisdiction would be reduced by taxpayers' capital loss, which was deductible in New Jersey but not in other state but not by additional lesser amount of taxpayers' rental loss, which was deductible in other state but not in New Jersey. *Allen v. Director Div. of Taxation*, 14 N.J.Tax 385 (1994).

Instructions on computing resident credit for income tax purposes were not erroneous. *Widder v. Director, Div. of Taxation*, 14 N.J.Tax 349 (1994).

Income not actually taxed by another state, but which was used by that state in calculating applicable tax rate for income from that state, would not be included in numerator of resident credit fraction. *Chin v. Director, Div. of Taxation*, 14 N.J.Tax 304 (1994).

Credit for foreign income tax; loss disallowed by New Jersey tax statute. *Berlin v. New Jersey Div. of Taxation*, 13 N.J.Tax 405 (1993).

Resident credit was properly calculated separately for each New York City and state tax. *Willett v. Director, Div. of Taxation*, 10 N.J.Tax 402 (1989).

Only income subject to tax by another state also taxed by New Jersey could be used to determine maximum gross income tax credit. *Stiber v. Director, Div. of Taxation*, 9 N.J.Tax 623 (1988).

Foreign city income tax that did not exceed minimum credit available could be credited against New Jersey income tax. *Stiber v. Director, Div. of Taxation*, 9 N.J.Tax 623 (1988).

Since alimony paid by taxpayers residing in New Jersey but working in New York was a deduction in New York, Director held to have properly excluded alimony payments from the numerator of the fraction

used to calculate the credit for tax paid to New York. *Nielson v. Taxation Div. Director*, 4 N.J.Tax 438 (Tax Ct.1982).

18:35-4.2 Credit for excess contributions

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

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

- i. The amount of New Jersey unemployment insurance contributions withheld;
- ii. The amount withheld for New Jersey disability benefits fund contributions or for a private plan;
- iii. The combined total amount withheld for Workforce Development Partnership Fund and Health Care Subsidy Fund contributions or, in the alternative, the separate amounts contributed to these funds;
- iv. The New Jersey unemployment number; and
- v. The New Jersey private plan number, if any.

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

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

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

viii. Example 8—Determining the credit for income taxed by New York State and New York City Unincorporated Business Tax (UBT).

INCOME SUBJECT TO TAX

	<u>New Jersey</u>	<u>New York</u>	<u>UBT</u>
Wages	25,000		
Interest	15,000		
Dividends	10,000		
Capital Gains	25,000		
Net Profits from Business	100,000	75,000	100,000
Income Subject to Tax Before Exemptions and Deductions	175,000	75,000	100,000
Less Exemptions	(2,000)		
New Jersey Taxable Income	173,000		
Tax	6,978	6,600	4,000
Numerator of the Credit Calculation		75,000	25,000

ix. Example 9—Determining the credit when S corporation income is reported on the other jurisdiction's return in separate categories.

INCOME SUBJECT TO TAX

	<u>New Jersey</u>	<u>Other Jurisdiction</u>	<u>Both</u>
Wages	100,000		
Interest			
Personal Interest	200		
S Corporation Interest		2,500	2,500

INCOME SUBJECT TO TAX

	<u>New Jersey</u>	<u>PA Income</u>	<u>Phila BPT</u>	<u>Phila NPT</u>
Wages	100,000			
Interest	200			
Partnership ABC	500,000	225,000	275,000	275,000
Income Subject to Tax Before Exemptions and Deductions	600,200	225,000	275,000	275,000
Less Exemptions	(1,000)			
New Jersey Taxable Income	599,200			
Tax Liability	36,043	6,300	17,875	10,909
Less BPT Credit (17,875 x 60%)				(10,725)
Tax	36,043	6,300	17,875	184
Effective Tax Rate		2.80%	6.50%	0.067%
Actual tax paid to other jurisdiction				
PA State Tax	6,300			
Phila BPT	17,875			
Phila NPT	184			
Numerator of Credit Calculation	24,359			275,000

S Corporation Income				
Ordinary	35,000		35,000	35,000
Interest	2,500	37,500		
Income Subject to Tax Before Exemptions and Deductions		137,700	37,500	37,500
Less Exemptions	(1,000)			
New Jersey Taxable Income	136,700			
Tax	6,582		2,625	
Numerator of the Credit Calculation				37,500

x. Example 10—Schedule C adjustments to income which are also taxable to New Jersey are included in the numerator of the credit calculation fraction.

INCOME SUBJECT TO TAX

	<u>New Jersey</u>	<u>Other Jurisdiction</u>	<u>Both</u>
Wages	100,000		100,000
Interest	200		
Net Profits from Business	35,000	25,000	25,000
Taxes Based on Income	1,000	36,000	1,000
Income Subject to Tax Before Exemptions and Deductions	136,200	126,000	126,000
Less Exemptions	(1,000)		
New Jersey Taxable Income	135,200		
Tax	6,486	8,820	
Numerator of the Credit Calculation			126,000

xi. Example 11—Determining the credit for Philadelphia partnerships subject to the Philadelphia Business Privilege Tax (BPT), Philadelphia Net Profits Tax (NPT), and the Pennsylvania Income Tax.

ii. Example 2—Determining the credit for income taxed both by another state and by a city within that state when the state and city are taxing the same amount of income.

INCOME SUBJECT TO TAX

	<u>New Jersey</u>	<u>Other State</u>	<u>Other City</u>
Wages	45,000	30,000	30,000
Income Subject to Tax Before Exemptions and Deductions	45,000	30,000	30,000
Less Exemptions	(2,000)		
New Jersey Taxable Income	43,000		
Tax	683	1,600	135
Numerator of the Credit Calculation			30,000

iii. Example 3—Determining the credit when income is taxed by two different states outside of New Jersey.

INCOME SUBJECT TO TAX

	<u>New Jersey</u>	<u>New York</u>	<u>Delaware</u>
Wages	20,000	12,000	8,000
Interest	1,000		
Dividends	2,000		
New York Adjustments		(1,500)	
Income Subject to Tax Before Exemptions and Deductions	23,000	10,500	8,000
Less Exemptions	(2,000)		
New Jersey Taxable Income	21,000		
Tax	298	600	130
Numerator of the Credit Calculation		(10,500)	(8,000)

iv. Example 4—Determining the numerator of the credit calculation fraction when the taxpayer allocates his income in the other jurisdiction.

INCOME SUBJECT TO TAX

	<u>New Jersey</u>	<u>Other Jurisdiction</u>	<u>Both</u>
Wages	125,000	100,000	100,000
Income Subject to Tax Before Exemptions and Deductions	125,000	100,000	100,000
Less Exemptions	(1,000)		
New Jersey Taxable Income	124,000		
Tax	5,773	4,800	
Numerator of the Credit Calculation			100,000

v. Example 5—Determining the numerator of the credit calculation fraction when part of New Jersey income is taxed by the other jurisdiction.

INCOME SUBJECT TO TAX

	<u>New Jersey</u>	<u>Other Jurisdiction</u>	<u>Both</u>
Wages	12,500	12,500	12,500
Interest	2,000		
Dividends	3,000		
Capital Gains	21,000		
Income Subject to Tax Before Exemptions and Deductions	38,500	12,500	12,500
Less Exemptions	(2,500)		
New Jersey Taxable Income	36,000		
Tax	560	400	
Numerator of the Credit Calculation			12,500

vi. Example 6—Determining the credit for wage income earned in Philadelphia.

INCOME SUBJECT TO TAX

	<u>New Jersey</u>	<u>Philadelphia</u>	<u>Both</u>
Wages	44,000	44,000	39,600
Less 401(k) Contributions	(4,400)		
Interest	1,500		
Dividends	450		
Income Subject to Tax Before Exemptions and Deductions	41,550	44,000	39,600
Less Exemptions	(1,000)		
New Jersey Taxable Income	40,550		
Tax	749	1,741	
Numerator of Credit Calculation			39,600

vii. Example 7—Determining the credit when there is partnership income earned in two different jurisdictions outside New Jersey and a separate New Jersey partnership which has a loss.

INCOME SUBJECT TO TAX

	<u>New Jersey</u>	<u>State 1</u>	<u>State 2</u>
Wages	100,000		
Interest	200		
Partnership Income			
Partnership ABC	10,000	10,000	
Partnership XYZ	5,000		5,000
Partnership KLM	7,000		
Partnership GSS	(12,000)		
Income Subject to Tax Before Exemptions and Deductions	110,200	10,000	5,000
Less Exemptions	(1,000)		
New Jersey Taxable Income	109,200		
Tax	4,830	650	150
Effective Tax Rate		6.50%	3.00%
Numerator of Credit Calculation		10,000	0

ii. A statement on the partnership's letterhead listing the jurisdiction, the taxpayer's share of gross income taxed by the other jurisdiction, and the taxpayer's share of tax paid is considered prima facie evidence of such amount of tax paid to the taxing jurisdiction and/or political subdivision.

10. Do not include in the numerator in the credit fraction any income which has been excluded or deducted from the taxable gross income of other jurisdiction(s) or which has not been taxed by other jurisdiction(s). Example: If a portion of long-term capital gains are excluded from such taxable income, such excluded portions may not be included in the numerator. In addition, do not include in the numerator any income that is not included in Entire New Jersey Income.

11. A New Jersey resident taxpayer in determining the resident credit allowed, as defined in this section, shall not combine in the numerator (Schedule A, Line 1, N.J. 1040) the same income subject to tax by the jurisdiction and/or political subdivision. The amount of income or wage tax during the tax year shown on Schedule A, Box B, N.J. 1040 for the taxpayer paying both a tax to another state and to a political subdivision of such state would be the total amount of state income tax and income tax or wage tax paid to the other state and political subdivision of such state, where the same amount of income is subject to tax in both the other state and political subdivision of such state. If the income subject to tax in both the other state and political subdivision of such state is not equal, a separate calculation shall be made of the excess income to arrive at the limitation of the credit for the income tax or wage tax paid to the other state and political subdivision of such state.

i. When claiming a credit for the taxes paid to another jurisdiction and/or political subdivision, the taxpayer shall file with the New Jersey tax return, a signed copy of the tax return filed with the other jurisdiction and/or political subdivision showing the amount of the tax paid.

(1) Taxpayers filing electronically with New Jersey must retain a copy of such signed return filed with the other jurisdiction and all supporting schedules and must make them available at the Division's request.

(2) If the taxpayer has filed electronically in the other jurisdiction, a copy of the Electronic Filing

Income Tax Return(s) alone is not sufficient. Electronic filers must also submit schedules, worksheets, etc. which document the income, by nature and source, being taxed by the other jurisdiction.

(3) A W-2 form or its equivalent which indicates the withholding of income tax in another jurisdiction and/or political subdivision is considered prima facie evidence of such amount of tax paid if the taxing jurisdiction and/or political subdivision imposing an income tax or wage tax does not require the filing of a return by the taxpayer claiming a credit.

(4) If the taxpayer is a member of a group which files a composite return with another jurisdiction, a statement on the filing entity's letterhead listing the jurisdiction, the taxpayer's share of gross income taxed by the other taxing jurisdiction, and the taxpayer's share of tax paid is considered prima facie evidence of such amount of tax paid to the taxing jurisdiction and/or political subdivision.

ii. If a taxpayer claims credit for taxes paid to more than one state on income earned in that state, a separate computation for the proportional credit limitation shall be made for each such state.

iii. If a taxpayer claims credit for taxes paid to one jurisdiction for different amounts of income taxed at different tax rates, a separate computation for the proportional credit limitation shall be made for each different amount of income.

12. The credit for tax paid to other jurisdictions must be determined in accordance with the following examples:

i. Example 1—Determining the denominator of the credit calculation fraction.

INCOME SUBJECT TO TAX BY NEW JERSEY

	Taxpayer A Without Pension	Taxpayer B With Pension Less Exclusion(s)
Wages	70,000	
Interest	250	4,000
Dividends	400	2,500
Gains		1,525
Pension/Annuity/IRA	0	30,000
Pension Exclusion	0	(15,000)
Taxable Pension		15,000
S Corporation Income	21,000	0
Income Subject to Tax Before Exemptions and Deductions	91,650	23,025

credit for tax paid to another state or political subdivision shall not exceed the percentage derived by dividing income subject to tax in the other jurisdiction by the taxpayer's entire New Jersey income multiplied by the tax otherwise due under the New Jersey Gross Income Tax Act.

i. The amount of the resident taxpayer credit for tax paid to another state or political subdivision shall not exceed the percentage of tax derived by dividing income subject to tax in the other jurisdiction by the taxpayer's entire New Jersey income multiplied by the tax otherwise due under the New Jersey Gross Income Tax Act.

ii. No credit shall be allowed for any income tax or wage tax imposed on S Corporation income allocated to this State as determined in accordance with N.J.S.A. 54A:5-10.

(1) When the New Jersey Corporation Business Tax allocation factor is 100 percent but the S Corporation in fact pays tax to another state based on or measured by income, the amount of income taxed, which qualifies for a reduction on the New Jersey Corporation Business Tax return, is deemed S Corporation income allocated outside of New Jersey. This S Corporation income is subject to the Gross Income Tax. In addition, if the taxpayer is required to file a personal income tax return in the other jurisdiction reporting the S Corporation income, the taxpayer would be eligible for credit for taxes paid to another jurisdiction.

iii. No credit shall be allowed for the amount of any taxes paid or accrued for the taxable year on or measured by profits or income imposed on or paid on behalf of a person other than the taxpayer, whether or not the taxpayer may be liable for the tax.

4. For the purpose of calculating the resident credit for taxes of another state, "taxpayer" means any individual, estate or trust required to report or pay taxes, interest and penalties under the Gross Income Tax Act, or whose income in whole or part is subject to the tax imposed by the Gross Income Tax Act.

5. If the tax of another state or political subdivision is readjusted for more or less of the tax of another state or political subdivision than he or she is finally required to pay, the taxpayer shall send notice of the difference to the Director who shall redetermine the tax liability for any years affected, regardless of any otherwise applicable statute of limitations, provided that:

i. The taxpayer is allowed a credit under this section;

ii. The taxpayer has filed a return with the other jurisdiction prior to the readjustment; and

iii. The taxpayer filed, with the original New Jersey tax return or by request submitted to the Division, a signed copy of the tax return filed with the other jurisdiction and/or political subdivision.

6. For purposes of determining the percentage, as provided in (a)3 above, for limitation of the tax credit:

i. Income subject to tax by the other jurisdiction means those items of income which are taxed by another jurisdiction before the allowance for personal exemptions and standard and/or other itemized deductions and which are also subject to tax under the New Jersey Gross Income Tax Act.

ii. Entire New Jersey income means the New Jersey gross income subject to tax before allowances for personal exemptions and deductions.

iii. Adjustment must be made in the numerator, for taxpayers who claim credit for income in the numerator which has been only partially taxed by the other jurisdiction.

7. As a result of the Reciprocal Personal Income Tax Agreement between the Commonwealth of Pennsylvania and the State of New Jersey, wages, salaries and other compensation paid to New Jersey residents employed in Pennsylvania are not subject to Pennsylvania income tax. Thus, a New Jersey resident may not claim a credit for taxes paid to Pennsylvania on employee compensation.

8. Taxes paid on income by a resident taxpayer to any municipality of Pennsylvania are eligible for the resident tax credit. For example, taxes paid under the City of Philadelphia Wage Tax would be eligible.

i. A W-2 Form must be attached to the New Jersey Gross Income Tax Resident Return (Form N.J. 1040) to indicate the name of the municipality, the amount subject to the municipal Wage Tax, and the amount of tax withheld.

9. The New Jersey tax on gross income does not tax partnerships directly. See N.J.S.A. 54A:2-2. Income taxes paid, measured by profits or income, by a partnership to another jurisdiction are deemed taxes paid by the individual partner and as such are eligible for the resident credit. For example, the New York City Unincorporated Business Tax, the Philadelphia Business Privilege Tax and Net Profits Tax are taxes paid by the partnership which are eligible for the resident credit.

i. A copy of the Partnership's Tax Return must be attached to the New Jersey Gross Income Tax Resident Return (Form N.J. 1040) to indicate the amount of the profits or income subject to tax and the amount of tax paid; or

(d) Individuals must complete Form NJ-2210 to determine underpayments of estimated tax, and to calculate the interest due on underpayments. If there has been an underpayment of estimated tax as of the installment date prescribed for its payment and the individual believes that one or more of the exceptions described in (e) below precludes the imposition of the addition to the tax, the individual must attach Form NJ-2210 to the declaration showing the applicability of any exception upon which the individual relied.

(e) The addition to tax with respect to any underpayment of any installment shall not be imposed if, on or before the last date prescribed for the payment of the installment, the total amount of all payments of estimated tax made on or before the due date for the installment equals or exceeds the amount which would have been required to be paid on or before such date if the estimated tax equals or exceeds the lesser of the amounts determined under (e)1 or 2 below:

1. The amount which would have been required to be paid on or before the due date for the installment if the estimated tax were the lesser of:

i. An amount equal to 100 percent of the tax shown on the return of the taxpayer for the preceding taxable year, if a return showing a liability for tax was filed by the taxpayer for the preceding taxable year and the preceding taxable year was 12 months (for taxable periods beginning on or after 1999, 110 percent of the tax shown on the return for taxpayers with taxable gross income in excess of \$150,000, \$75,000 for a married individual as defined in Internal Revenue Code section 7703 filing separately);

ii. An amount equal to 100 percent of the tax computed at the rates applicable to the taxable year, on the basis of the taxpayer's status with respect to the taxpayer's personal exemptions for the taxable year, but otherwise on the basis of the facts shown on the taxpayer's return for, and the law applicable to, the preceding taxable year (for taxable periods beginning on or after 1999, 110 percent of the tax shown on the return for taxpayers with taxable gross income in excess of \$150,000, \$75,000 for a married individual as defined in Internal Revenue Code section 7703 filing separately); or

iii. An amount equal to 80 percent of the tax for the taxable year (two-thirds of the tax for farmers) computed by placing the income for the months in the taxable year ending before the month in which the installment is due on an annualized basis by:

(1) Multiplying by 12 (or, in the case of a taxable year of less than 12 months, the number of months in the taxable year) the income for the months in the taxable year ending before the month in which the installment is due. (For trusts and estates, the income for the months ending before the date one month before the month in which the installment is required);

(2) Dividing the resulting amount by the number of months in the taxable year ending before the month in which the installment due date falls. (For trusts and estates, the number of months ending before the date one month before the month in which the installment due date falls); and

(3) Deducting from such amount the deductions for personal exemptions allowable for the taxable year (such personal exemptions being determined as of the installment due date); or

2. An amount equal to 90 percent of the tax computed, at the rates applicable to the taxable year, on the basis of the actual income for the months in the taxable year ending before the month in which the installment is required to be paid.

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

SUBCHAPTER 4. CREDITS AGAINST TAX

18:35-4.1 Computation of credit for taxes paid to other jurisdictions

(a) The following provisions shall govern the computation of the tax credit by reason of any income or wage tax paid to another state or political subdivision of such state under the New Jersey Gross Income Tax Act.

1. N.J.S.A. 54A:4-1 provides for a credit against the New Jersey gross income tax as follows: Resident credit for tax of another state.

i. A resident taxpayer shall be allowed to credit against the tax otherwise due under this act for the amount of any income tax or wage tax imposed for the taxable year by another state of the United States or political subdivision of such state, or by the District of Columbia, with respect to income which is also subject to tax under this act, except as provided by (a)3 below.

ii. The credit provided under this section shall not exceed the proportion of the tax otherwise due under this act that the amount of the taxpayer's income subject to tax by the other jurisdiction bears to his entire New Jersey income.

2. The credit against the New Jersey tax applies with respect to the income tax or wage tax paid in the other state or political subdivision thereof on income which is also subject to tax under the New Jersey Act. Therefore, there shall be excluded from the income in the other state any income which is not subject to tax under the New Jersey law.

3. N.J.S.A. 54A:4-1(b), (c) and (d) provide for a limitation on the credit for tax paid to another state or political subdivision. The amount of the resident taxpayer