

CHAPTER 35

NEW JERSEY GROSS INCOME TAX

Authority

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

Source and Effective Date

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

Executive Order No. 66(1978) Expiration Date

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

Chapter Historical Note

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

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

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

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

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

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

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

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

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

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

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

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

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SUBCHAPTER 1. GENERAL PROVISIONS

18:35-1.1 Summer payment plan

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

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

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

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

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

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

18:35-1.3 Declaration of estimated tax; 1976

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

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

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

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

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

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

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

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

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

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

(h) Rules on penalties are:

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

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

i. Example:

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

(2) 50 per cent of Federal adjusted gross income: \$7,500.00;

(3) Multiply item (2) by 75 per cent: \$5,625.00;

(4) \$5,625 times two per cent: \$112.50

(5) In this example, a tax paid of less than \$112.50 will be subject to penalty.

3. If the taxpayer does not meet either of the tests described above, there shall be added to the tax for the taxable year an amount at the rate of nine per cent per annum upon the amount of the underpayment for the period of the underpayment, but not beyond the 15th day of the fourth month following the close of the taxable year. No underpayment shall be deemed to exist with respect to a declaration or installment otherwise due on or after the taxpayer's death.

R.1976 d.425, effective December 17, 1976.
See: 9 N.J.R. 52(c).

18:35-1.4 Information furnished at source

(a) Payers of interest and dividends, including banks, savings and loan associations, building and loan associations and savings banks, are required under N.J.S.A. 54A:1-1 et seq. to provide the Director, New Jersey Division of Taxation, with information returns which shall include the amounts paid to or credited to the accounts of all recipients for the period from July 1, 1976, to and including December 31, 1976. Such information returns must be filed on or before February 15, 1977. In the event it is not practicable to furnish the information for the required period, this requirement may be satisfied by each payer of interest and dividends 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 year of 1976, 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 year 1976 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 year 1976.

R.1976 d.400, effective December 14, 1976.
See: 9 N.J.R. 48(c).

18:35-1.5 Information furnished at the source; payers other than interest and dividends

(a) In addition to the information required to be furnished under section 4 of this subchapter, all payers, includ-

ing those who are required to file Federal Internal Revenue form 1099 or any of the form 1099 designations, shall file a copy thereof with the Division of Taxation, P.O. Box 1848, Trenton, New Jersey 08625, or or before March 15, 1977, in the same form and under the same conditions as provided for in section 4 of this subchapter where the amount paid is \$1,000 or more.

(b) Payers 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.

R.1977 d.19, effective January 26, 1977.
See: 9 N.J.R. 101(a).

18:35-1.6 Treatment of capital gains and losses pursuant to P.L. 1976, c.47

(a) As a result of the enactment of chapter 40 of the Public Laws of 1977 on March 16, 1977, capital gains realized during the calendar year 1976 are subject to special treatment by reason of an amendment to section 54A:5-1(c) of the New Jersey Gross Income Tax Act.

(b) Said amendment provides that "For the tax year 1976, any taxpayer with a tax liability under this subsection, or under the 'Tax on Capital Gains and Other Unearned Income Act' (P.L.1975, c.172), shall not be subject to payment of an amount greater than the amount he would have paid if either return had covered all capital transactions during the full tax year 1976; provided, however, that the rate which shall apply to any capital gain shall be that in effect on the date of the transaction. To the extent that any loss is used to offset any gain under (P.L. 1975 c.172) it shall not be used to offset any gain under the 'New Jersey Gross Income Tax Act', (P.L. 1976, c.47)."

(c) Accordingly, the following rule is issued in order to set forth the method of calculating the capital gain which must be included in the capital gains and other unearned income tax return and/or gross income tax return for the 1976 taxable year.

(d) The taxpayer shall determine the net amount of gain and loss applicable to each six-month period. He must determine the net gain or loss attributable to the period from January 1, 1976, to June 30, 1976, during which the Capital Gains and Other Unearned Income Tax Law was in effect for 1976, and he must determine the net gain or loss attributable to the period from July 1, 1976, to December 31, 1976, during which the New Jersey Gross Income Tax Law was in effect for 1976. Where it is determined that a net loss occurred during either period, such net loss may be applied against the net gain, if any, which is realized in the other taxable period. The following illustrates the procedure which is required to be followed:

UNEARNED INCOME TAX
Gains and losses subject to tax
(January 1, 1976, to June 30, 1976)

Feb. 5, 1976: Gain \$5,000
Net gain (1-1-76 to
6-30-76) \$5,000
Loss allowed under c. 40,
P.L.1977 \$2,000
Net gain subject to tax \$3,000

GROSS INCOME TAX
Gains and losses subject to tax
(July 1, 1976, to December 31, 1976)

Aug. 3, 1976: Gain \$10,000
Oct. 14, 1976: Loss \$12,000
Net loss (7-1-76 to
12-31-76) \$2,000

1. The \$2,000 net loss incurred during the second half of 1976 under the gross income tax is allowed as a deduction against the net gain of \$5,000 realized during the first half of 1976 under the unearned income tax. The taxpayer would, therefore, be permitted to report a net gain of \$3,000 under the unearned income tax. He would have no net gain or loss under the gross income tax.

2. Where the taxpayer is an estate or trust, the same rules shall apply and the estate or trust will be permitted to offset a net gain in the second half of 1976 under the gross income tax if a net loss was incurred during the first half of 1976, even though the unearned income tax did not apply to estate and trusts.

3. In addition, individuals who were not subject to the capital gains and other unearned income tax during the first half of 1976 by reason of the modified Federal adjusted gross income threshold may also avail themselves of the net loss offset if a net loss was incurred during the first half of 1976.

R.1977 d.94, effective March 18, 1977.
See: 9 N.J.R. 199(c).

18:35-1.7 Accelerated returns and payment of certain employers' withheld taxes

(a) Certain employers, as hereinafter described, required to deduct and withhold taxes from wages under the Gross Income Tax Act shall file a semimonthly employer's return, as hereinafter set forth.

1. Any employer required to deduct and withhold taxes from wages paid on or after May 1, 1977, where the amount required to be deducted can reasonably be expected to be \$18,000 or more for the semiannual period during which the semimonthly filing period occurs, shall, for each semimonthly period beginning May 1, 1977, file an employer's semimonthly return (form N.J. 500-S) with payment of the taxes withheld in accordance with the following schedule:

Period	Due date
First semimonthly period	Last day of the month
Second semimonthly period	15th day of the month following

2. Pertinent definitions are:

i. For the purposes of this regulation, "semimonthly period" means a period beginning on the first day of a calendar month and ending on the 15th day of said calendar month, and a period beginning on the 16th day of a calendar month and ending on the last day of said calendar month;

ii. For the purposes of this regulation, "semiannual period" means either a period from January 1 through June 30 of a calendar year, or a period from July 1 through December 31 of a calendar year.

3. Consecutive returns for each semimonthly period, accounting for all taxes withheld during the year, must be filed by an employer who is required to report semimonthly. If no tax was withheld during a particular semimonthly period, a return still must be filed for such period, together with a statement explaining why no tax was withheld.

Note: For the future, a depository system similar to the Federal system is contemplated.

Editor's Note: A copy of form N.J. 500-S and its instructions was filed with the above rule but is not reproduced herein. Information on this data may be obtained from the Division of Taxation, Department of the Treasury, P.O. Box 1848, Trenton, New Jersey 08625.

R.1977 d.149, effective May 1, 1977.
See: 9 N.J.R. 193(a), 9 N.J.R. 295(b).

18:35-1.8 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, beginning with February 15, 1978, with the Division of Taxation, P.O. Box 1848, Trenton, New Jersey 08646, where the amount paid or credited is \$1,000 or more.

(c) This requirement may 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.

R.1977 d.460, effective December 6, 1977.
See: 10 N.J.R. 45(a).

18:35-1.9 Reporting of interest on 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 paragraph 1 of this subsection. 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 T
 Transit Authority Bonds

(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.

18:35-1.10 Quarterly or semiannual filing of withholding returns and payment of certain employers' withheld taxes; exception as to seasonal employers

(a) Effective for the semiannual period beginning on January 1, 1979, where the aggregate amount required to be deducted and withheld by any employer is less than \$25 in a calendar month and the aggregate for the semiannual period ending on June 30 or December 31 can reasonably be expected to be less than \$150, the employer return and payment of withheld taxes for such period may be made on or before July 31 for the semiannual period ending on June 30 and on or before January 31 for the semiannual period ending on December 31.

(b) Effective for the calendar quarter beginning on January 1, 1979, where the aggregate amount required to be deducted and withheld by any employer is \$200 or less in each month of a calendar quarter and the aggregate for the quarterly period ending on March 31, June 30, September 30, or December 31 can reasonably be expected to be less than \$600, the employer return and payment of withheld taxes for such period may be made on a quarterly basis on or before the 15th day of the month following the close of the calendar quarter period ending on March 31, June 30 or September 30. Any return due with respect to the calendar quarter ending on December 31 shall be filed and taxes paid on or before January 31 following the close of said calendar quarter.

(c) Where the aggregate amount required to be deducted and withheld by any employer exceeds \$200 in a calendar month, the employer return and payment of withheld taxes for such monthly period and for prior months in a calendar quarter must be made on or before the 15th day of the month following the close of such month or months during the calendar quarter period. In the event an employer monthly return and payment of withheld taxes is not required, an employer return and payment of withheld taxes for the quarterly period ending on March 31, June 30, or September 30, may be made on or before the 15th day of the month following the close of such quarter. Any return due with respect to the calendar quarter ending on December 31 shall be filed and taxes paid on or before January 31 following the close of said calendar quarter.

(d) Subsections (a), (b) and (c) shall not apply to an employer engaged in a business operating seasonally. Consecutive returns for each calendar month accounting for all tax withheld must be filed by a seasonal employer who is required to report monthly. Where the amount required to be deducted can reasonably be expected to be \$18,000 or more for a semi-annual period, a seasonal employer shall file semi-monthly employer returns with payment of the taxes withheld as provided under section 1.7 of these rules. 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.

R.1978 d.319, effective September 13, 1978.
 See: 10 N.J.R. 361(b), 10 N.J.R. 457(a).

18:35-1.11 Time for filing information returns

The time for filing of information returns to be supplied to the Division of Taxation by all filers of form 1099 with the Federal Internal Revenue Service is extended to February 28, 1979.

R.1979 d.56, effective February 8, 1979.
 See: 11 N.J.R. 152(a).

18:35-1.12 Computation of tax credit

(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.

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

4. For purposes of determining the percentage, as provided in paragraph 3 above, for limitation of the tax credit:

i. Income subject to tax by the other jurisdiction means those categories 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 categories of New Jersey gross income subject to tax before allowances for personal exemptions and deductions.

iii. Adjustment must be made:

(1) In the numerator, for taxpayers who claim credit for income in the numerator which has been only partially taxed by the other jurisdiction; and

(2) In the denominator, for taxpayers who claim credit for income in the numerator as income subject to tax in the other state or political subdivision thereof which has already been excluded from New Jersey income.

(3) For example, a taxpayer who includes in the numerator (see line 69, N.J. 1040 ±) pension and/or other retirement income which is subject to tax by the other jurisdiction but which is excluded from the denominator (line 17c of Form N.J. 1040) shall make an adjustment in the denominator to add back such pension and/or other retirement income to reflect the entire New Jersey income.

5. Taxes paid by a resident taxpayer under the City of Philadelphia Wage Tax and New Profits Tax are eligible for the resident tax credit.

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

ii. A copy of the City of Philadelphia Net Profits Tax Return must be attached to the New Jersey Gross Income Tax Resident Return (Form N.J. 1040) to indicate the amount of the City of Philadelphia Net Profits Tax paid.

6. The following examples will illustrate how the maximum allowable resident credit for tax paid to another jurisdiction shall be determined:

i. Example 1: Taxpayer income is as follows:

NEW YORK		
Wages		\$15,000
Capital Gains		
Long Term	\$20,000	
Deduction	<u>12,000</u>	<u>8,000</u>
Total New York Income		\$23,000
NEW JERSEY		
Wages		\$15,000
Dividends		3,000
Capital Gains		<u>20,000</u>
		\$38,000
Less: Exemptions		<u>2,000</u>
		\$36,000
New Jersey Tax		\$ 800
Line 67 New York income subject to tax (not \$35,000):		\$23,000
Line 68 Entire New Jersey Income:		\$38,000
Line 69 $\$23,000 \div \$38,000 = 60.53\% \times \$800 =$		\$484.24
Maximum Allowable Credit		

ii. Example 2: Taxpayer income is as follows:

NEW YORK		
Rental Income		\$13,000
N.Y.C. Pension		<u>4,000</u>
Total New York Income		\$17,000
NEW JERSEY		
Wages		\$ 2,000
Rental Income		21,000
Pension (NYC)	\$4,000	
N.J. Exclusion	<u>4,000</u>	<u>-0-</u>
		\$23,000
Retirement Income Exclusion		<u>6,000</u>
		\$17,000
Less: Exemptions		<u>2,000</u>
		\$15,000
Tax		\$ 300
Line 67 New York Income Subject to Tax:		\$17,000
New Jersey Gross Income (Line 17c):		\$17,000
Plus Exclusions:		
Pension Income	4,000	
Retirement Income	6,000	
Line 68 Entire New Jersey Income:		\$27,000
Line 69 $\$17,000 \div \$27,000 = 62.96\% \times \$300 =$		\$188.88
Maximum Allowable Credit		

iii. Example 3:

A resident, New Jersey taxpayer has two businesses ("A"—N.Y., "B"—N.J.) and the net profits (or losses) from such are both reportable at line 39 of the return. The net income of business "A" is \$50,000 and is entirely attributable to New York. The net loss of business "B" is \$40,000 and is entirely attributable to New Jersey.

The taxpayer has paid a tax on \$50,000 to New York but only on \$10,000 to New Jersey (\$40,000 loss netted against the \$50,000 net income at line 39).

The taxpayer may include as income subject to tax by the other jurisdiction on line 67 (Form N.J. 1040) only business

income subject to tax in New Jersey and therefore, must deduct from the \$50,000 New York business income the \$40,000 not subject to tax as business income in New Jersey.

In no event may a taxpayer claim a credit for income or wage taxes paid to other jurisdiction(s) unless the income so claimed is also included in entire New Jersey income at line 68 of the return.

Taxpayer Income is as follows:

NEW YORK		
Business Income	\$50,000	
NEW JERSEY		
Dividend Income	\$ 5,000	
Interest	2,000	
Capital Gain Income	3,000	
Business		
Income	\$50,000	
Business		
Loss	(40,000)	10,000
		<u>20,000</u>
Less: Exemptions		2,000
		<u>\$18,000</u>
Tax		\$ 360
Line 67 New York Income	\$50,000	
Less: Amount Not Subject to tax in		
New Jersey	40,000	
Income Subject to Tax in New York		
which is also Subject to Tax in New		
Jersey:	\$10,000	
Line 68 Entire New Jersey Income:	\$20,000	
Line 69 $\$10,000 \div \$20,000 = 50\%$ of $\$360 = \180 Maxi-		
mum Allowable Credit		

iv. Example 4: Taxpayer income is as follows:

NEW YORK		
Wages	\$15,000	
Less Sick Pay qualifying in New York only	5,000	
Total New York Income	\$10,000	
NEW JERSEY		
Wages	\$15,000	
Dividends	3,000	
Capital Gains	2,000	
		<u>20,000</u>
Less: Exemptions		2,000
		<u>\$18,000</u>
Tax		\$360
Line 67 New York Income Subject to Tax (not \$15,000):	\$10,000	
Line 68 Entire New Jersey Income: \$20,000		
Line 69 $\$10,000 \div \$20,000 = 50\%$ of $\$360 = \180 Maxi-		
mum Allowable Credit		

7. The following is the worksheet for credit for taxes paid to another jurisdiction:

WORKSHEET FOR CREDIT TO OTHER JURISDICTIONS:

(Use this worksheet to determine "entire New Jersey income" at line 68 of the return if a credit to other jurisdictions is being claimed.)

List the following:

- Gross Income (Line 17c)
- Pension Exclusion (Line 45(b))
(see instruction below)
- Retirement Income/Special Exclusion
(Line 17b) (see instruction below)
- Entire New Jersey Income (income subject to tax by another jurisdiction which is also subject to tax under the N.J. Gross Income Tax Act). (Add lines a, b and c) (to be entered here and at line 68.)

INSTRUCTIONS:

The amount of pension exclusion claimed at line 40b and the amount of retirement income exclusion claimed at line 17b are includible in determining "entire New Jersey income" and are, therefore, to be included in the amount reported by you at line 67.

EXAMPLE:

A resident New Jersey taxpayer has two businesses and the net profits (or losses) from such are both reportable at line 34 of the return. The net income of business "A" is \$50,000 and is entirely attributable to New York. The net loss of business "B" is \$40,000 and is entirely attributable to New Jersey.

The taxpayer has paid a tax on \$50,000 to New York but only on \$10,000 to New Jersey (\$40,000 net loss netted from \$50,000 net income at line 39).

The taxpayer may include as income subject to tax by the other jurisdiction on line 67 (Form N.J. 1040) only business income subject to tax in New Jersey and therefore must deduct from the \$50,000 New York business income the \$40,000 not subject to tax as business income in New Jersey.

In no event may a taxpayer claim a credit for income or wage taxes paid to other jurisdiction(s) unless the income so claimed is also included in entire New Jersey income at line 68 of the return.

Taxpayer should retain this worksheet for substantiation of the credit claimed.

8. Instruction for line 67: Do not include on this line 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 line 67.

9. A New Jersey resident taxpayer in determining the resident credit allowed against the tax due under this Act for the amount of any income tax or wage tax imposed for the taxable year by another state or political subdivision of such state or by the District of Columbia, shall not combine in the numerator (line 64, 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 line 70, N.J. 1040 for the taxpayer paying both a tax to another state and 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. Where the income subject to tax in both the other state and political subdivision of such state are 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.

For example:

STEP NO. 1

Line 67	Income subject to tax in both the other state and its political subdivisions	_____
Line 68	New Jersey Gross Income (Line 17c, NJ 1040)	_____
Line 69	Line 67 _____ × New Jersey Tax (Line 25, N.J. 1040) Line 68 = Maximum allowable credit	_____
Line 70	Tax paid on amount in Line 67 to each jurisdiction State Political Subdivisions	_____
Line 71	Lesser of Line 69 or 70	_____

STEP NO. 2

Line 67	Amount subject to tax in one jurisdiction and not in the other(s)	_____
Line 68	New Jersey Total Gross Income (Line 17c, NJ 1040)	_____
Line 69	Line 67 _____ × New Jersey Tax (Line 25, NJ 1040) Line 68 = Maximum allowable credit	_____
Line 70	Tax paid to the jurisdiction on amount appearing on Line 67	_____
Line 71	Lesser of Line 69 or 70	_____

STEP NO. 3
Step No. 1 Line 71 plus Step No. 2 Line 71 _____

The following examples illustrate the above outlined procedures:

Example 1

Taxpayer A

(1)	Total Gross Income (Line 17c, NJ 1040)	\$100,000
	Income subject to tax in other jurisdictions:	
(2)	New York State: \$40,000	
(3)	New York City: \$50,000	
(4)	Identical income subject to tax in both jurisdictions: \$40,000	
(5)	New York State Tax: \$2,700	

- (6) New York City Tax: \$225
- (7) New Jersey Tax (Line 25, NJ 1040) \$2,690

Calculation of Credit

STEP NO. 1

Line 67	(4) above	\$ 40,000
Line 68	(1) above	100,000
Line 69	\$40,000 _____ × \$2,690 100,000	1,076
Line 70	New York State (based on \$40,000 as indicated on line (4) above) New York City 4/5 × \$225 (based on \$40,000 as indicated on line (4) above)	\$2,700 180
Line 71		<u>2,880</u> <u>\$1,076</u>

STEP NO. 2

Line 67	(3)-(2)	\$ 10,000
Line 68		100,000
Line 69	\$10,000 _____ × \$2,690 100,000	269
Line 70	/15 × \$225	45
Line 71		<u>45</u> <u>\$ 45</u>

STEP NO. 3

Line 71	Step No. 1	\$1,076
	Step No. 2	45
Line 26	Total New Jersey Tax Credit Allowed	<u>\$1,121</u>

Example 2

Taxpayer B

- (1) Total Gross Income (Line 17c, NJ 1040) \$100,000
- Income subject to tax in other jurisdictions:
- (2) New York State: \$50,000
- (3) New York City: \$40,000
- (4) Identical income subject to tax in both jurisdictions: \$40,000
- Tax paid to other jurisdictions:
- (5) New York State Tax: \$4,200
- (6) New York City Tax: \$180
- (7) New Jersey Tax (Line 25, NJ 1040) \$2,690

Calculation of Credit

STEP NO. 1

Line 67	(4) above	\$ 40,000
Line 68	(1) above	100,000
Line 69	\$40,000 _____ × \$2,690 100,000	1,076
Line 70	New York State (based on \$40,000 as indicated on line (4) above) New York City (based on \$40,000 as indicated on line (4) above)	\$2,700 180
Line 71		<u>2,880</u> <u>\$1,076</u>

STEP NO. 2

Line 67	(2)-(3)	\$ 10,000
Line 68		100,000
Line 69	\$10,000 _____ × \$2,690 100,000	269

Line 70 (5) Above Less: Step No. 1, Line 70	\$4,200		
	<u>2,700</u>	1,500	
Line 71		<u>\$ 269</u>	
STEP NO. 3			
Line 71 Step No. 1	\$1,076		
Step No. 2	<u>269</u>		
Line 26 Total New Jersey Tax Credit Allowed	<u>\$1,345</u>		

Example 3

Taxpayer C			
Income the same in both state and city			
Line 67		\$ 40,000	
Line 68		100,000	
Line 69	\$40,000		
	<u>100,000</u> × \$2,690	1,076	
Line 70	New York State	\$2,700	
	New York City	<u>180</u>	2,880
Line 71 (Line 26, NJ 1040)	Tax Credit		<u>\$ 1,076</u>

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. 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 where 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.

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

iii. Example 1: Taxpayer Income is as follows:

Husband and Wife File Jointly—2 Exemptions

NEW YORK			
Wages		\$20,000	
Standard Deduction		<u>2,400</u>	
		\$17,600	
Exemption			
2 × 66.6% (\$700)		<u>933</u>	
		<u>\$16,667</u>	
New York State Tax		\$ 1,027	
New York City Tax		<u>81</u>	
Total Tax		\$ 1,108	
NEW JERSEY			
Wages		\$20,000	
Interest		1,000	
Dividends		2,000	
Other Income		<u>7,000</u>	
		\$30,000	
Exemptions		<u>2,000</u>	

New Jersey Tax		\$28,000
Tax Credit		<u>\$ 600</u>
Line 67 Income Subject to Tax by Other Jurisdiction		\$20,000
Line 68 Income Subject to Tax by New Jersey		\$30,000
Line 69 Maximum Allowable Credit		
\$20,000 ÷ \$30,000 × \$600 (N.J.Tax) =		\$400
Line 70 Income or Wage Tax Paid to Other Jurisdictions		\$1,108
Line 71 New Jersey Tax Credit Allowed		<u>\$400</u>

iv. Example 2: Taxpayer Income is as follows: Husband and Wife File Jointly—2 Exemptions

OTHER STATE		
Wages		\$20,000
Assume		
State Tax		250
Local Wage Tax		<u>75</u>
Total Tax		\$ 325
Wages		\$20,000
Interest		1,000
Dividends		2,000
Other Income		<u>7,000</u>
		\$30,000
Exemptions		<u>2,000</u>
		\$28,000
New Jersey Tax		
Tax Credit		\$ 600
Line 67 Income Subject to Tax by Other Jurisdiction		\$20,000
Line 68 Income Subject to Tax by New Jersey		\$30,000
Line 69 Maximum Allowable Credit		
\$20,000 ÷ \$30,000 × \$600 (N.J.Tax) =		\$400
Line 70 Income or Wage Tax Paid to Other Jurisdictions		\$325
Line 71 New Jersey Tax Credit Allowed		<u>\$325</u>

v. Example 3: Taxpayer Income is as follows:

Husband and Wife File Jointly—2 Exemptions

OTHER JURISDICTION		
Wages		\$20,000
Local Wage Tax		<u>\$ 800</u>
NEW JERSEY		
Wages		\$20,000
Interest		2,000
Dividends		<u>2,000</u>
		\$24,000
Exemptions		<u>2,000</u>
		\$22,000
Tax		\$ 450
Tax Credit		
Line 67 Income Subject to Tax by Other Jurisdiction		\$20,000
Line 68 Income Subject to Tax by New Jersey		\$24,000
Line 69 Maximum Allowable Credit		
\$20,000 ÷ \$24,000 × \$450 (N.J.Tax) =		\$375
Line 70 Wage Tax Paid to Other Jurisdiction		\$800
Line 71 New Jersey Credit Allowed		<u>\$375</u>

vi. Example 4: Taxpayer Income is as follows:

Husband and Wife File Jointly—2 Exemptions

OTHER JURISDICTIONS		
State A—Wages		\$10,000
State B—Wages		<u>\$15,000</u>
Assume		
State A—Tax		\$ 150
State B—Tax		<u>\$ 600</u>

NEW JERSEY	
Wages	\$25,000
Interest	1,000
Dividends	2,000
	<u>\$28,000</u>
Exemptions	2,000
	<u>\$26,000</u>
New Jersey Tax	\$ 550
Tax Credit	
State A	
Line 67—Income Subject to Tax by Other Jurisdiction	\$10,000
Line 68—Income Subject to Tax by New Jersey	\$28,000
Line 69—Maximum Allowable Credit	
$10,000 \div \$28,000 \times \550 (N.J.Tax) =	\$196.42
Line 70—Income or Wage Tax Paid to Other Jurisdiction	\$150.00
Line 71—New Jersey Tax Credit Allowed	\$150.00
State B	
Line 67—Income Subject to Tax by Other Jurisdiction	\$15,000
Line 68—Income Subject to Tax by New Jersey	\$28,000
Line 69—Maximum Allowable Credit	
$15,000 \div \$28,000 \times \500 (N.J.Tax) =	\$294.65
Line 70—Income or Wage Tax Paid to Other Jurisdiction	\$600.00
Line 71—New Jersey Tax Credit Allowed	\$294.65
Total New Jersey Tax Credit Allowed	
State A—\$150.00	
State B—\$294.65	
	\$444.65

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.

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).

18:35-1.13 One-time election to exclude up to \$100,000 of gain on sale of principal residence; rollovers

(a) The rules concerning one-time election to exclude up to \$125,000 of gain on sale of principal residences and rollovers are as follows.

1. General rule: Capital gains one-time exclusion; where taxpayers 55 years or older sell a principal residence on or after January 1, 1979 which they have owned and used as principal residence for at least three years during the five year period ending on the date of the sale, they may make a one-time election to exclude up to \$125,000 of gain realized on the sale.

2. Prior election: The fact that a taxpayer age 65 or older made the prior election to exclude gain on a pre-January 1, 1979 sale of residence will not prevent him or her from electing the new \$125,000 exclusion.

3. Joint return: In the case of jointly owned property where a joint return is filed, if one spouse meets the age, holding, and use requirements for the exclusion, both spouses are treated as meeting such requirements.

4. Deceased spouse: Taxpayer over 55 years of age whose spouse is deceased will be treated as satisfying the holding and use requirements if the taxpayer was at least 55 years of age prior to the date of the sale and has not remarried, and the deceased spouse must have satisfied the holding and use requirements and must not have made a prior election to take the exclusion on another residence.

5. Coupling one-time exemption with residence rollover exclusion: This one-time election may be coupled with the residence rollover exclusion described below, for deferring all or part of the gain not excluded under the \$125,000 exclusion rule.

6. Residence rollover exclusion: Gains derived from the sale or exchange of principal residence where a new residence is purchased within two years after the sale of the prior residence are not includible in gross income if the purchase price of the new principal residence is equal to or greater than the adjusted sales price of the principal residence sold.

7. Multiple rollover provision—Applicable only to residence rollover-exclusion: If a taxpayer had excluded gain from the sale of a residence within 24 months prior to the sale of a subsequent principal residence, the tax free rollover of the second sale will be permitted only where the sale of the residence is in connection with relocation and employment at a new principal place of work, and the taxpayer satisfies both the geographic and length of employment requirements for the deductibility of moving expense for Federal purposes.

i. Example: On January 1, 1979, a taxpayer sold his personal residence in Englewood at a gain and purchased a more expensive residence in the same city on February 15, 1979. The gain derived from the sale of the first residence qualified for deferral under the law and the taxpayer was not required to report the gain for tax purposes. In August, 1979, the taxpayer's employer permanently transferred him to a new principal place of work in Cherry Hill which transfer qualified the taxpayer to deduct his moving expenses for Federal income tax purposes. On September 1, 1979, the taxpayer sold his Englewood residence at a gain and purchased a more expensive residence at the new job location in Cherry Hill. Ordinarily, a taxpayer cannot defer the gain derived from two personal residences if he has already elected to defer a gain during a two-year period. However, in this situation, the taxpayer qualified again to defer the gain derived from the sale of the second home which he purchased in Englewood by reason of the fact that his purchase of a new personal residence in Cherry Hill was necessitated in connection with relocation in employment at a new principal place of work and because geographic and Federal moving expense requirements were met.

ii. Where the multiple rollover provision applies, the basis of each new residence must be reduced by the amount of gain deferred on the preceding sale.

R.1979 d.475, effective December 5, 1979.

See: 11 N.J.R. 594(a), 12 N.J.R. 56(c).

Amended by R.1987 d.476, effective November 16, 1987.

See: 19 N.J.R. 1182(a), 19 N.J.R. 2201(c).

18-month changed to two-year.

18:35-1.14 Partnerships and partners

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

1. "Partnership" means and shall include a syndicate, group, pool, joint venture and any other unincorporated organization through or by means of which any business, financial operation or venture is carried on and which is not a corporation, trust or estate within the meaning of the New Jersey Gross Income Tax Act. "Partnership" shall not include:

i. A publicly traded partnership;

ii. A limited partnership association;

iii. An unincorporated organization whose members properly elect to exclude such organization from the application of Subchapter K of Subtitle A of the Internal Revenue Code; or

iv. Any other entity which is not taxed as a partnership for Federal income tax purposes.

2. "Partner" means and shall include any person or entity subject to the Gross Income Tax who shall be a member of a partnership, whether as a general partner or a limited partner.

(b) Partners, not partnerships shall be subject to tax and resident and non-resident partners treated as follows:

1. A partnership as such is not subject to the Gross Income Tax. However, each partner of a partnership shall be subject to Gross Income Tax on his or her distributive shares of the categories of New Jersey gross income, whether or not distributed, realized by the partnership for its taxable year ending within or with such partner's taxable year. Each partner shall account for and report his or her distributive shares of the partnership's categories of New Jersey gross income in the manner provided in (c) below.

2. A partner who is a resident taxpayer of New Jersey shall report and be subject to Gross Income Tax upon such partner's full distributive shares of the categories of New Jersey gross income of each partnership in which such partner is a member, regardless of the sources from which such income was derived by each such partnership.

3. A partner who is a nonresident taxpayer of New Jersey shall report and be subject to tax upon the distributive shares of the categories of New Jersey gross income of each partnership in which such partner is a member, but only to the extent such income was derived by the partnerships from sources within New Jersey.

i. Where a partnership's business is carried on solely within New Jersey, all items of the income, gain, expenses or losses of the partnership are deemed to have been derived from sources within New Jersey.

ii. Where a partnership's business is carried on both within and outside of New Jersey, the portion of the partnership's income, gains, expenses or losses attributable to sources within New Jersey shall, except as provided in (b)3iii below, be determined by use of the New Jersey Business Allocation Schedule (Form NJ-1040-NR-A), as prepared by the partnership.

iii. Where a partnership's business is carried on both within and outside of New Jersey, and the partnership believes that the determination of the portion of the partnership's income, gains, expenses or losses attributable to sources within New Jersey by use of the New Jersey Business Allocation Schedule does not provide an equitable allocation of such items to sources within and outside of New Jersey, and the books and records of the partnership will disclose to the Director's satisfaction a more appropriate method of allocation of such items, the partnership may request from the Director an exception from the use of the New Jersey Business Allocation Schedule. Any such request shall be made in writing and shall set forth the basis of the request and the substitute method of allocation requested to be used in lieu of use of the New Jersey Business Allocation Schedule. The substitute method of allocation may not be utilized prior to the submission of the partnership's exception request and the approval of such request by the Director. The partnership's exception request, once approved, shall be made every three years, unless the Director or the partnership requests a change sooner.

(c) The determination of a partner's distributive shares of the partnership's items of gross income shall be as follows:

1. Each partnership which has one or more New Jersey resident partners, or which derives any item of gross income from sources within New Jersey, shall compute its New Jersey gross income in the same manner as would an individual taxpayer. Such gross income shall be allocated according to its character among the categories of gross income specified in N.J.S.A. 54A:5-1. Each partner's respective distributive shares of the partnership's various categories of gross income shall be determined by the partnership agreement of the partnership in the same manner the partner's distributive share of partnership income is determined for Federal income tax purposes.

2. Each partner shall report as such partner's "distributive share of partnership income" described in N.J.S.A. 54A:5-1k the net aggregate amount of:

i. The partner's distributive shares of the net profits (or loss) from each partnership of which such partner is a member derived from the conduct by such partnership of a business, profession or other income-producing activity, provided such business, profession or income-producing activity constitutes the conduct of a trade or business, plus

ii. The amount of the partner's guaranteed payments, as determined for Federal income tax purposes, from each partnership of which such partner is a member.

3. A partnership shall determine its net profits (or loss) from the conduct of a business, profession or other income-producing activity for purposes of this subsection in the same manner an individual taxpayer determines his or her "net profits from business" pursuant to N.J.A.C. 18:35-1.25, provided, however, in the case of tiered partnerships, a partnership shall take into account its distributive share of partnership income from any partnership of which it is a member.

4. Each partner shall report such partner's distributive shares of each category of New Jersey gross income of the partnership, other than the partnership's net profits (or loss) from the conduct of a business, profession or other income-producing activity described in (c)2 and 3 above, as an item of income attributable to such category of gross income in the same manner as if the partner had derived such item of gross income directly from sources other than a partnership. Each such item of gross income attributable to any category of gross income shall be reported on a consolidated basis with the partner's other items of gross income which are attributable to such category and which are derived from sources other than a partnership.

5. In the case of any category of gross income which pursuant to the Gross Income Tax Act is to be determined on a net income basis, a partner's distributive share of partnership income, gain, loss or expense attributable

to such category shall be reported on a net consolidated basis with the partner's items of income, gain, loss or expenses derived from sources other than a partnership which also are attributable to the same category of gross income.

6. A partner may not report a distributive share of partnership income or loss on a consolidated basis with the partner's net income or loss from business derived from sources other than a partnership.

7. In determining a partner's distributive share of partnership income or loss, no deduction is allowed for expenses which are not incurred by the partnership.

8. The provisions of this section are illustrated by the following examples:

Example 1: A partnership shows the following income on its Federal Partnership Return of Income (Form 1065):

Partnership ordinary income (derived from the conduct of a trade or business):	\$25,000
Included in the partnership's ordinary income is interest income of \$500 derived from U.S. Treasury bills and excluded from the partnership's ordinary income is interest income of \$300 derived from State of New York bonds	
Dividend income (non-business source):	1,200
Long term capital gain on sale of partnership capital assets:	<u>1,000</u>
Total	<u>\$27,200</u>

Partner A has a 50 percent interest in the partnership and is entitled to a 50 percent share of partnership profits or losses. How does partner A report his share of the partnership income or gain on his New Jersey Form NJ-1040?

Partner A reports this income for New Jersey Gross Income Tax purposes as follows:

Distributive share of federal partnership ordinary income	\$12,500
Adjustments for New Jersey Gross Income Tax purposes:	
Add: Interest on New York State bonds	<u>150</u>
	<u>\$12,650</u>
Deduct: Interest on U.S. Treasury bills	(250)
Partner A's distributive share of partnership income:	\$12,400
Dividends:	600
Net gains from disposition of property:	<u>500</u>
Total New Jersey Gross Income:	<u>\$13,500</u>

Example 2: A taxpayer has the following income:

Distributive share of partnership income, including \$5,000 of guaranteed payments:	\$12,000
Distributive share of partnership capital gain (non-business):	2,000
Salary and wages from employment:	15,000
Capital loss on sale of individually owned stock:	(4,000)

How is this reportable for New Jersey gross income tax purposes on taxpayer's Form NJ-1040?

The taxpayer will report this income for New Jersey Gross Income Tax purposes as follows:

Salary and wages from employment:	\$15,000
Distributive share of partnership income:	12,000
Capital loss on sale of individually owned stock:	(\$4,000)
Plus: Distributive share of partnership gain:	2,000
Net gain from disposition of property:	0 †
Total New Jersey gross income	<u>\$27,000</u>

† Note: The taxpayer may offset the capital loss on the sale of individually owned stock against his distributive share of the partnership's capital gain, but may not apply the resulting net loss from the disposition of property against income attributable to other categories of New Jersey gross income.

Example 3: A taxpayer has the following income:

Salary and wages from employment:	\$10,000
Distributive share of partnership loss:	(3,000)
Distributive share of partnership capital loss (non-business):	(2,000)
Capital gain on sale of individually owned stock:	5,000

How is this income reportable for New Jersey Gross Income Tax purposes on Form NJ-1040?

Salary and wages from employment:	\$10,000
Gain on sale of stock:	\$5,000
Less: Share of partnership capital loss:	(2,000)
Net gains or income from disposition of property:	3,000
Distributive share of partnership income:	0 †
Total New Jersey gross income	<u>\$13,000</u>

† Note: The taxpayer cannot apply his distributive share of partnership loss against his income attributable to other categories of New Jersey gross income. The taxpayer may only net a distributive share of a partnership loss against a distributive share of partnership income derived from another partnership.

Example 4: The Federal form Schedule K-1 (Form 1065) issued to a partner of a partnership actively engaged in the practice of medicine contained the following information:

Partnership net ordinary income (all of which is derived from business activities):	\$25,000
Interest income realized on money market accounts holding required working capital:	300
Interest income realized on security deposits held by lessors pertaining to medical equipment leased by the partnership and used in its trade or business:	100
Portfolio (i.e., non-business) income:	
Interest (Includes \$500 from U.S. Treasury bills and does not include \$300 from New York State bonds held by the partnership):	1,800
Dividends:	1,200
Royalties:	500
Net long term capital gain:	600
Gain on the sale of property described in I.R.C. § 1231:	400

The taxpayer will report this information on his NJ-1040 as follows:

Distributive share of partnership income:

Business ordinary income	\$25,000	
Interest on working capital	300 †	
Interest on security deposits	100	
Net distributive share of partnership income reportable on NJ-1040:		25,400
Interest:	1,800	
Adjustments:		
Less interest income from U.S. Treasury bills	(500)	
Plus interest income from New York State bonds	300	
Interest income reportable on NJ-1040:		1,600
Dividends:		1,200
Net income from rents, royalties, etc.:		500
Gains from disposition of property:		
Long term capital gain	600	
§ 1231 gain	400	
Net gains from disposition of property:		1,000

† Note: Interest income realized by the partnership with respect to its working capital and security deposits may be taken into account in determining the partnership's net income or loss from trade or business only if the partnership annexes to its tax return the statement described in N.J.A.C. 18:35-1.14(f)4. Absent such statement, the interest income must be separately reported as "interest" by the partnership and will be taxable to the partners as "interest."

Example 5: The Federal form Schedule K-1 (Form 1065) issued to a partner of a partnership actively engaged in a trade or business of dealing in and trading securities contained the following information:

Partnership net ordinary income (all of which is derived from business activities):	\$25,000
Other classes of partnership income:	
Interest (Includes \$500 from U.S. Treasury bills and does not include \$300 from New York State bonds) (realized in the ordinary course of business):	1,800
Dividends (realized in the ordinary course of business):	1,200
Trading gains treated as capital gain (realized in the ordinary course of business):	600
Net gain under I.R.C. § 1231:	400
Royalties (non-business):	500

The taxpayer will report this income on his NJ-1040 as follows:

Partnership items of income derived from the conduct of a trade or business:		
Partnership net ordinary income:	\$25,000	
Interest:	1,800	
Dividends:	1,200	
Net trading gains treated as capital gain:	600	
	<u>\$28,600</u>	
Adjustments:		
Interest income from U.S. Treasury bills	(500)	
Interest income from New York State bonds	300	
	<u>(200)</u>	
Distributive share of partnership income:		\$28,400
Net Gains from the disposition of property, § 1231 Gain		400
Net income from rents, royalties, etc.:		500

Example 6: Taxpayer is a partner in two partnerships. Partnership A is a medical partnership and Partnership B is a securities partnership. Each partnership's activities constitute an active trade or business. The Federal Schedules K-1 (Form 1065) issued to the taxpayer by the partnerships contained the following information:

	Partnership A	Partnership B
Partnership net ordinary income	\$100,000†	(\$240,000) †
Other income:		
Interest:	5,000 ††	1,000 †
Dividends:	—	25,000 †
Capital gain:	12,000 ††	20,000 †
Net gain or loss under I.R.C. § 1231	—	(5,000) ††
The taxpayer also incurred with respect to his partnerships the following unreimbursed business expenses:	15,000	8,000

† Business income.
†† Non-business income.

The Taxpayer will report this income on his NJ-1040 as follows:

Partnership A	
Partnership Ordinary Income	\$100,000
Partnership B	
Partnership net ordinary income	(\$240,000)
Interest	1,000
Dividends	25,000
Capital gain	20,000
	<u>(194,000)</u>
	(94,000)
Distributive share of partnership income:	0 †
Interest income (Partnership A):	5,000
Gains from disposition of property:	
Capital gain (Partnership A)	12,000
§ 1231 loss (Partnership B)	(5,000)
Net gain from disposition of property:	<u>7,000</u>

† Note: Taxpayer would report "0" on the line of his NJ-1040 calling for the taxpayer's distributive share of partnership income. However, if the taxpayer had been a partner of a third partnership, up to \$94,000 of the taxpayer's distributive share of income realized by the third partnership from the conduct of a trade or business could be offset by the net \$94,000 loss from Partnerships A and B.

Example 7: The Federal form Schedule K-1 (Form 1065) issued to a New Jersey resident partner of a partnership actively engaged in the practice of law in New York contained the following information:

Partnership net ordinary income:	\$10,000
Guaranteed payments:	5,000
Interest (Includes \$2,000 from U.S. Treasury bills and does not include \$2,000 from New York State bonds) (non-business):	5,000
Net gain under I.R.C. § 1231:	4,000
I.R.C. § 179 deduction:	1,000
Taxes based on income (UBT):	2,000
Expense incurred to carry New York State bonds:	1,000
Keogh deduction:	2,000
Charitable contributions (non-business):	3,000

The taxpayer also incurred unreimbursed business expenses with respect to his partnership in the amount of \$3,000.

The taxpayer will report this information on his NJ-1040 as follows:

Partnership net ordinary income	\$10,000	
Guaranteed payments	<u>5,000</u>	
		\$15,000
Adjustments		
Taxes Based on Income	2,000	
§ 179 Deduction	<u>(1,000)</u>	
		<u>1,000</u>
Distributive share of partnership income:		16,000 †
Interest income		
Adjustments:	5,000	
Interest income from U.S. Treasury bills	<u>(2,000)</u>	
Interest income from New York State bonds	2,000	
Net Adjustments:		<u>-0-</u>
Interest:		5,000 ††
Net Gains from the disposition of property:		
§ 1231 Gain		4,000

† Note: Keogh Plan contributions for partners, charitable contributions not deducted under I.R.C. § 162 and unreimbursed business expenses are not deductible for Gross Income Tax purposes.

†† Note: The cost to carry the New York State bonds cannot be deducted because the expense was not incurred in the ordinary course of a trade or business conducted by the partnership.

Example 8: The taxpayer is a New Jersey resident who is a partner in two partnerships. Partnership A is a New York based securities partnership and Partnership B is a New Jersey based accounting partnership. Each partnership's activities constitute an active trade or business. The Federal forms Schedule K-1 (Form 1065) issued to the taxpayer by the partnerships contained the following information:

	Partnership A	Partnership B
Partnership Ordinary Income:	(\$10,000) †	(\$15,000) †
Guaranteed payments:	2,000	
Interest:	8,000 †	3,000 ††
Interest from U.S. Treasury Bills included in the interest above	7,000 †	
Interest from Pennsylvania State bonds not included in interest above	5,000 †	
Dividends:	5,000 †	
Net short term capital gains or losses:	(2,000) †	
Net long term capital gains or losses:	18,000 †	(1,000) ††
Net Gain under § 1231:	1,500 ††	
Taxes based on income (UBT):	2,500 †	
Cost to carry Pennsylvania bonds:	1,000 †	
Keogh deductions:	2,000	
Charitable contribution incurred as a business expense:		3,000

† Business income.
†† Non-business income.

The taxpayer is also a shareholder in a New York S corporation. The Schedule K-1 issued by the S corporation showed an ordinary loss of (\$5,000)†.

The taxpayer will report this information on his NJ-1040 as follows:

<u>Partnership A</u>		
Partnership ordinary income	(10,000)	
Guaranteed payments	2,000	
Interest	8,000	
Dividends	5,000	
Net short term capital loss	(2,000)	
Net long term capital gain	<u>18,000</u>	
		\$21,000
Adjustments:		
Interest income from U.S. Treasury Bills	(7,000)	
Interest income from Pennsylvania State Bonds	5,000	
Taxes based on income	2,500	
Cost to carry Pennsylvania bonds	<u>(1,000)</u>	
		(500)
Distributive share of partnership income from Partnership A:		20,500
<u>Partnership B</u>		
Partnership ordinary income	(15,000)	
Charitable contribution incurred as a business expense:	(3,000)	
Adjustments:	<u>-0-</u>	
Distributive share of partnership loss from Partnership B		(18,000)
Distributive share of partnership income:		2,500
Interest (Partnership B):		3,000
Gains from disposition of property:		
Net gain under § 1231 (Partnership A)	1,500	
Net long term capital loss (Partnership B)	<u>(1,000)</u>	
Net gains from the disposition of property:		500

† Note: S Corporation status is not recognized for New Jersey Gross Income Tax purposes. An S Corporation shareholder's share of the corporation's loss is not deductible for New Jersey Gross Income Tax purposes.

(d) If a partner's taxable year differs from that of the partnership, the partner is to report the partner's distributive share of income, gain or loss for the taxable year of the partnership which ends with or within his or her taxable year.

Example 1: A partner's taxable year ends on December 31, 1979, while the partnership's fiscal year ends on June 30, 1979. The partner is to report the partner's entire distributive share of the income, gain or loss from the partnership's taxable year ended June 30, 1979 on the partner's 1979 NJ-1040.

(e) The following apply to partners who are part-year residents:

1. A partner who is a resident taxpayer for part of any taxable year and a nonresident taxpayer for part of such taxable year is required to report his or her distributive share of partnership income as follows:

i. The part-year resident return shall include:

(1) The portion of the partner's distributive share of partnership income determined by multiplying the partner's entire distributive share of partnership income (including guaranteed payments) by the percentage which the number of days of the partnership's fiscal year that the partner was a New Jersey resident bears to 365; plus

(2) The partner's distributive share of each other category of New Jersey gross income (or loss) realized by the partnership during the period covered by the return.

ii. The part-year nonresident return shall include:

(1) The portion of the partner's distributive share of partnership income as follows:

(A) If the distributive share of partnership income was derived entirely from New Jersey sources, the portion of that distributive share of partnership income (including guaranteed payments) determined by multiplying the partner's entire distributive share of partnership income by the percentage which the number of days of the partnership's fiscal year that the partner was not a New Jersey resident bears to 365; or

(B) If the distributive share of partnership income was derived partly within New Jersey and partly outside New Jersey, the portion of such distributive share determined by multiplying the partner's entire distributive share of partnership income derived by the partnership from sources within New Jersey (determined as provided in (b)3ii or (b)3iii above), by the percentage which the number of days of the partnership's fiscal year that the partner was not a New Jersey resident bears to 365; and

(2) The partner's distributive share of each other category of New Jersey gross income (or loss) realized by the partnership and derived from New Jersey sources during that period covered by the return.

2. If the partner can demonstrate to the Director's satisfaction that the above reporting method does not properly reflect the partner's reportable income, gains and losses incurred during the partner's periods of residency and nonresidency, then the partner may allocate to the part year resident and part year nonresident returns the portions of the partner's distributive share of partnership income realized by the partnership during each such period.

3. In all cases, a partner who is a resident taxpayer for part of the tax year and a nonresident taxpayer for the remainder of the tax year must attach a schedule to the partner's part year NJ-1040 and the part year NJ-1040-NR showing the calculations used to determine the amounts reported on each return with respect to income, gains, or losses of a partnership.

(f) Partnership filing requirements are as follows:

1. Partnerships having a New Jersey resident partner or having any income derived from New Jersey sources shall file with the Division a complete copy of the Federal Form 1065, U.S. Partnership Return of Income, required to be filed with the Internal Revenue Service, along with the requisite schedules and attachments. Such information filing must be made on or before the date of expiration of the permitted filing period for the partnership's Federal Form 1065, including any extensions of such period allowed for Federal income tax purposes.

2. Except as may be authorized by the Director pursuant to (b)3iii above, every partnership which derives income both from sources within and outside of New Jersey and which has one or more nonresident partners shall complete a New Jersey Business Allocation Schedule (NJ-1040-NR-A). The partnership shall attach a copy of the Schedule to the Federal Form 1065 which it files with the Division, and must also provide a copy of the Allocation Schedule to each nonresident partner.

3. Each partnership shall distribute to each of its partners their respective Schedule K-1 of the partnership's Federal Form 1065. Each partnership also shall distribute to any partner requesting same any materials required to be filed by the partner with the partner's return pursuant to (g) below.

4. Any partnership which for Federal income tax purposes includes interest or dividends in the ordinary income or loss of the partnership, shall annex to its tax return which it files with the Division a statement such as that described in N.J.A.C. 18:35-1.25(b)2 which justifies the inclusion of such income items in the partnership's ordinary income or loss for New Jersey Gross Income Tax purposes. Any partnership which fails to annex such a statement to its return shall separately state on its return the full amounts of its dividend and interest income.

(g) Partner filing requirements are as follows:

1. Each nonresident taxpayer who is a partner in a partnership having income, gains or losses derived from New Jersey sources shall, for each such partnership, include a copy of each of the following with the partner's New Jersey non-resident tax return:

i. The partner's Federal Schedule K-1;

ii. Reconciliation of his or her share of partnership income as determined for Federal income tax purposes, in accordance with (c) above; and

iii. The partnership's New Jersey Business Allocation Schedule (NJ-1040-NR-A), as provided by the partnership.

2. Each resident taxpayer shall include with the New Jersey resident tax return a copy of each of the items specified in (g)1i through ii above, for each partnership in which the taxpayer is a partner, regardless of the source from which the partnership's income, gains, or losses are derived.

(h) The following apply to Keogh Plans:

1. Partnership contributions to a Keogh Plan made on behalf of employees of the partnership and which are deductible as ordinary and necessary business expenses for Federal income tax purposes also shall be deductible for New Jersey Gross Income tax purposes in determining the net income of the partnership. The employees on whose behalf such contributions were made are not subject to gross income tax on the amounts contributed in the taxable year in which they are contributed to the Keogh Plan, unless withdrawn in such taxable year by the employees from the Plan. The employees are not considered to have actually or constructively received the contributions at the time they were made to the Keogh Plan. When an employee makes a withdrawal from the Keogh Plan, both the untaxed employer contribution and accumulated interest earned thereon are taxable to the employee.

2. Partnership contributions to a Keogh Plan made on behalf of a partner are not deductible business expenses. Such contributions are to be taken into account in determining the distributive shares of partnership income of the individual partners for New Jersey gross income tax purposes in the taxable years in which they are contributed to the Keogh Plan. Previously taxed employer contributions to a Keogh Plan are not subject to tax when subsequently withdrawn by the partners.

3. The interest income accumulated on the Keogh Plan contributions made by the partnership on behalf of the partners is not subject to tax during the period of a partner's participation. Such interest shall become taxable when the partner withdraws it from the Keogh Plan. When a partner makes periodic withdrawals, the accumulated interest in the Keogh Plan is subject to tax in the ratio that the interest bears to the total amount in the partner's account.

4. The provisions of this subsection are illustrated by the following examples:

Example 1: A partner's accumulated Keogh contributions held in his account:	\$7,500
Accumulated interest in partner's Keogh account:	500
Total amount in partner's Keogh account:	\$8,000

Assume periodic payments to the partner from the account during the taxable year of \$1,600.

The amount of interest withdrawn would be calculated as follows:

$$\frac{\$ 500}{\$8,000} \times \$1,600 = \$100$$

Note: Under the above facts, if a periodic withdrawal of \$1,600 were made by an employee (rather than by a partner) during the taxable year, the full amount of \$1,600 is subject to tax since the employer contribution component of the amount withdrawn was not includable in the employee's income at the time the partnership made the contribution on his behalf.

Example 2: A partnership makes a contribution to a Keogh Plan on behalf of the partners for \$3,000 and on behalf of the employees for \$4,500. The partnership may deduct the \$4,500 contribution on behalf of the employees as a business expense for the taxable year and the employees will not include the \$4,500 as income until withdrawal is made from the Keogh Plan. The partnership cannot deduct the \$3,000 contribution made on behalf of the partners as a business expense for the taxable year. Each partner must include the portion of the \$3,000 contribution made on his behalf in his computation of his distributive share of partnership income in the taxable year the contribution was made. The amount of the contribution thus taxed to the partner will not again be taxable to the partner when such moneys are withdrawn by the partner from the Keogh Plan.

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".

Case Notes

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).

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).

18:35-1.15 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.

(b) Amounts received by an employee on account of personal injury or sickness qualify for exclusion from taxable gross income when received under the provisions of an employee accident or health insurance plan which satisfies the following requirements:

1. The payments must be compensation for wage loss which results from absence due to injury or sickness of the employee; and
2. The payments must have a requisite certainty under an enforceable contractual obligation under the plan (see N.J.A.C. 18:35-1.15(e)); and
3. The payments must not relate to sick leave wage continuation, the taking of which is largely discretionary and the payments are made regardless of the reason for absence from work.

(c) The exclusion from taxable gross income applies to payments to employees under a health or accident insurance plan regardless of whether insurance coverage is with a commercial insurance company to which premiums are paid by both employees and employer or solely by the employer; or whether insurance coverage is provided by an employer's self-insured plan for which no insurance premiums are paid by the employees.

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

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

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

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

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

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

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

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

1. Examples:

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

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

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

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

R.1982 d.164, effective June 7, 1982.
See: 14 N.J.R. 271(a), 14 N.J.R. 581(a).

18:35-1.16 (Reserved)

R.1982 d.258, effective August 16, 1982.
See: 14 N.J.R. 332(a), 14 N.J.R. 921(b).
Repealed by R.1988 d.299, effective July 5, 1988.
See: 20 N.J.R. 514(a), 20 N.J.R. 1571(a).

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

18:35-1.17 Credit for excess contributions

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

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

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

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

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

iv. The New Jersey unemployment number; and

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

(b) The latter two numbers referred to in (a)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.

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

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

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

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

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

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

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

Added new (a)1iii; redesignated old (a)1iii and iv to (a)1iv and v; revised (b) and (c).

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

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

18:35-1.18 Extension of time to file New Jersey gross income tax return

(a) Subject to the requirements set forth in (e) below, an automatic four month extension of time may be obtained by all taxpayers for filing their annual New Jersey Gross Income Tax Return provided the taxpayer has been granted at least a four month extension for Federal income tax purposes. A copy of the Federal application for automatic extension must be attached to the taxpayer's New Jersey return.

(b) If no automatic Federal extension has been obtained, the taxpayer must file a request for an automatic four month extension on Form NJ-630—Application for Extension of Time to File New Jersey Gross Income Tax Return. This form can be obtained from the Forms Section of the Division of Taxation, CN-269, 50 Barrack Street, Trenton, New Jersey 08646, or at any District Office. The request for extension must be filed with payment of at least 80 percent of the taxpayer's tax liability (as required on Form NJ-630) on or before the original due date of the New Jersey return and is subject to the requirements set forth in (e) below.

(c) Additional extensions beyond the automatic four month extension in subsections (a) and (b) above must be specifically requested by a taxpayer from the New Jersey Division of Taxation using Form NJ-630—Application for Extension of Time to File New Jersey Gross Income Tax Return. This form can be obtained from the Forms Section of the Division of Taxation, CN-269, 50 Barrack Street, Trenton, New Jersey 08646, or at any District Office. An extension beyond four months will not be considered unless the request is submitted on Form NJ-630 and the full amount of any estimated tax (as required on Form NJ-630) has been paid. The request for additional extension must be filed on or before the extended due date of the New Jersey return and is subject to the requirements set forth in (e) below.

(d) Extensions may be granted for a maximum of six months from the original due date of the return unless exceptional circumstances justify a longer period.

(e) At least 80 percent of the taxpayer's tax liability as shown on the final return must be paid, either in the form of withholdings or estimated payments, on or before the original due date of the New Jersey tax return. Where a taxpayer has failed to pay at least 80 percent of the actual New Jersey tax liability, the extension will be deemed to be invalid and the taxpayer will be subject to late filing and late payment penalties as described in subsections (f) and (g) below as if no extension has been granted.

(f) A taxpayer who has not paid the required 80 percent of the final tax liability at the time the request for extension is filed will become liable for the following late filing penalties (see N.J.S.A. 54:49-4).

1. \$100.00 per month or any fraction of a month that the return is delinquent; and
2. Five percent per month or any fraction of a month that the return is delinquent, up to a maximum of 25 percent of the balance of any tax due with the return.
3. Both penalties set forth in (f)1 and 2 above shall be imposed on the first day following the original due date of the return and on the same calendar day of each succeeding month thereafter.

(g) All taxpayers making a late payment of tax, whether or not they have obtained an extension of time to file, are subject to the following late payment penalty and interest payments:

1. A five percent penalty for late payment of any tax balance (see N.J.S.A. 54:49-4);
2. Interest on the unpaid tax at the rate of nine percent per annum up to and including December 8, 1987 and on and after December 9, 1987 at the annual rate of three percentage points above the prime rate effective on the first business day of the calendar quarter immediately preceding the quarter in which the liability became due, compounded daily on the amount that remains unpaid from the original due date of the return to the date of payment where the amount thereof is \$1.00 or more (see N.J.S.A. 54A:9-5(a)), provided that payment is made on or before the extended due date; and
3. Interest on the unpaid tax at the annual rate of five percentage points above the prime rate effective on the first business day of the calendar quarter immediately following the quarter in which the liability became due, compounded daily on the amount that remains unpaid from the original due date of the return to the date of payment where the amount thereof is \$1.00 or more and remains unpaid beyond the extended due date.
4. The following is an example of the computation of late payment penalty and interest payments:

i. A New Jersey resident files for an extension of time to file his NJ-1040 which is originally due on April 15, 1988 but would be due on August 15, 1988 if a four month extension is granted. With the request for extension the taxpayer submits payment of what amounts to 70 percent of his final tax liability. The NJ-1040 is filed on July 27, 1988. As a result of the taxpayer's failure to pay at least 80 percent of his final tax liability at the time he filed for the extension, the extension is denied. The taxpayer had a final tax liability of \$10,000 for the year of which \$7,000 was paid at the time he filed for the extension. The taxpayer owes the following amounts in addition to the balance of unpaid tax:

Delinquency penalty: \$100.00 per month × four months	\$ 400.00
Late filing penalty: five percent per month of the tax due × four months = 20 percent of \$3,000.00 (\$10,000.00 tax less \$7,000 payment)	600.00
Late payment penalty: five percent of balance of the tax due	150.00
Balance of tax liability	3,000.00
Interest on tax calculated at an annual rate of the prime rate plus five percentage points compounded daily from the original due date (April 15, 1988) until the date of payment (July 27, 1988), plus interest on penalty at the same rate from the date the penalty is assessed until the date of payment. The applicable prime rates shall be the rates effective on January 1, 1988 and April 1, 1988 which are assumed to be nine percent and nine and one-half percent, respectively, for the purposes of this example.	<u>150.85</u>
Total due	<u>\$4,300.85</u>

† Note: Under present Federal procedure, an automatic four month extension is granted.

R.1984 d.195, effective May 21, 1984.
See: 16 N.J.R. 514(a), 16 N.J.R. 1284(b).
Amended by R.1985 d.454, effective September 3, 1985.
See: 17 N.J.R. 1643(a), 17 N.J.R. 2146(a).
Substantially amended.
Amended by R.1988 d.407, effective September 6, 1988.
See: 19 N.J.R. 2255(a), 20 N.J.R. 2310(c).
Substantially amended (f) and (g).

Law Review and Journal Commentaries

Tax Law. Robert J. Alter, Jay A. Soled, 138 N.J.L.J. No. 1, S64 (1994).

Case Notes

Penalties and interest; interest extension request denied due to failure to satisfy condition that 80% of income tax due be paid. *Patel v. Director, Div. of Taxation*, 13 N.J.Tax 509 (1993).

18:35-1.19 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).

18:35-1.20 Gambling winnings defined

(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).

18:35-1.21 Employee defined

(a) For the purposes of N.J.A.C. 18:35-1.22, the term "employee" means every individual performing services if the relationship between him and the person for whom he performs such services is the legal relationship of employer and employee. The term also includes officers and employees, whether elected or appointed, of the United States, a state, territory, Puerto Rico, or any political subdivision thereof, or the District of Columbia, or any agency or instrumentality of any one or more of the foregoing.

(b) When determining whether an individual is in an employer-employee relationship, relevant factors shall be considered, including the following:

1. The relationship which the parties believe they have created;
2. The extent of control exercisable by the person receiving the benefit of the services over the manner and method of performance. It is not necessary that the employer actually direct or control the manner of performance, but it is sufficient if he has the right to do so;
3. Whether the person rendering the service undertook substantial costs to perform the service;
4. Whether the service required special training or skill, and whether the person receiving the benefit of the services provided such special training;
5. The duration of the relationship between the parties;
6. Whether the person rendering the service had a risk of loss;
7. Whether the person who received the benefit of the services could discharge without cause the person who performed the services;
8. The method of payment, such as by time or by job;
9. Whether the person rendering services regularly performs the same services for other persons and is not protected to any degree from competition;
10. Whether the person for whom services are performed furnishes tools, equipment, support staff and a place to work to the individual rendering the services;
11. Whether the individual rendering the services is eligible for employer provided benefits such as pension, bonuses, paid vacation days and sick pay;
12. Whether the person receiving the benefits of the services rendered carries workmen's compensation insurance on the individual performing the services;
13. Whether the Internal Revenue Service determines that an individual performing services is an employee; and
14. Any other information deemed to be relevant by the Division.

(c) No single factor in (b) above shall necessarily be conclusive in determining whether an individual is an employee or self-employed. The final determination as to whether an individual is either an employee or self-employed shall be based upon the review of the circumstances of the entire relationship and the evaluation of any special facts in a particular case.

(d) If the relationship of employer and employee exists, the designation or description of the relationship by the

parties as anything other than that of employer and employee shall be immaterial, including designation as a partner, co-adventurer, agent, independent contractor, or similar designations or descriptions.

(e) All classes or grades of employees shall be included within the relationship of employer and employee, including Superintendents, managers, and other supervisory personnel:

1. An officer of a corporation shall be considered an employee of the corporation, except that an officer of a corporation who as such does not perform any services, or performs only minor services, and who neither receives nor is entitled to receive, directly or indirectly, any remuneration shall not be considered an employee of the corporation.
2. A director of a corporation in his capacity as such shall not be considered an employee of the corporation.

New Rule, R.1988 d.419, effective September 6, 1988.
See: 20 N.J.R. 515(a), 20 N.J.R. 2319(c).

18:35-1.22 Requirement of withholding from employees

(a) Any employer that maintains an office or transacts business within this State, and that makes payment of any wages subject to New Jersey gross income tax to a resident or nonresident individual, shall deduct and withhold tax from such wages paid to each employee (as defined in N.J.A.C. 18:35-1.21) for each payroll period.

(b) The withholding of tax from the employee's wages must be in accordance with the instructions and methods prescribed by the current employer instruction booklet (Form NJ-WT).

New Rule, R.1988 d.419, effective September 6, 1988.
See: 20 N.J.R. 515(a), 20 N.J.R. 2319(c).

18:35-1.23 Employee business expenses not deductible

(a) If an individual is an employee as defined in N.J.A.C. 18:35-1.21, such person shall not deduct from gross income any costs and expenses incurred in connection with such employment.

(b) If an individual is an employee as defined in N.J.A.C. 18:35-1.21, all earnings in connection with employment are deemed to be and shall be reported by the taxpayer as wages, salaries, commissions, bonuses and other remuneration received for services rendered, pursuant to N.J.S.A. 54A:5-1(a). In no case shall an employee report his or her earnings as net profits from business as defined by N.J.S.A. 54A:5-1(b).

New Rule, R.1988 d.419, effective September 6, 1988.
See: 20 N.J.R. 515(a), 20 N.J.R. 2319(c).

18:35-1.24 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. 18:35-1.9(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).

18:35-1.25 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) 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 income-producing activity, provided such business, profession or other income-producing activity constitutes the conduct of a trade or business. Such income shall be taken into account in determining the taxpayer's net profits from business, regardless of its source or character, provided it is directly attributable to the conduct of a trade or business by the taxpayer. All other income of the taxpayer which is subject to gross income tax, that is, that which is not directly 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."

1. Income derived by a taxpayer in the taxpayer's capacity as an employee shall not be taken into account in determining the taxpayer's net profits from business, but rather shall be taxed as salary, wages, etc., described in N.J.S.A. 54A:5-1a. Income derived by a self-employed taxpayer as remuneration for services rendered in the conduct of a trade or business shall be taken into account in determining the taxpayer's net profits from business.

2. Interest and dividend income derived by a taxpayer shall not be taken into account in determining a taxpayer's net profits from business, unless:

i. The taxpayer shall annex to the taxpayer's tax return a statement which demonstrates that the interest or dividends, as the case may be, were realized in the conduct of a trade or business by the taxpayer, and not from investment activities or other income-producing activities which do not constitute the conduct of a trade or business. An adequate demonstration shall have been made where it is shown that:

(1) The interest is derived from loans made in the ordinary course of a trade or business of lending money;

(2) The interest or dividends are realized with respect to short-term liquid investments of money in an amount which does not exceed the reasonably anticipated working capital needs of the taxpayer's trade or business;

(3) The interest is derived in respect of accounts receivable or installment obligations acquired in the ordinary course of a trade or business, but only where credit is ordinarily offered to customers of the business;

(4) The interest or dividends are realized with respect to investments held to meet requirements imposed by law with respect to the conduct of a trade or business (for example, minimum capital requirements imposed by regulatory agencies), or with respect to deposits made in the ordinary course of business (for example, security deposits pertaining to leases by the taxpayer of property used by the taxpayer in a trade or business, or deposits pledged by the taxpayer to secure loans incurred by the taxpayer in the conduct of a trade or business), or with respect to other interest or dividend-bearing contracts or instruments held in the ordinary course of business (for example, interest received on life insurance policies owned by a taxpayer insuring the lives of key employees of the taxpayer's trade or business);

(5) The interest or dividends are derived in the ordinary course of an activity of trading or dealing in any property which generates such income, if such activity constitutes the conduct of a trade or business; or

(6) The interest or dividends are otherwise realized directly in the conduct of a trade or business, as demonstrated to the satisfaction of the Director.

3. Where no statement is attached to the taxpayer's return, or where such statement fails to demonstrate that the interest or dividends in question have been realized in the conduct of a trade or business, such items of income 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, as the case may be.

4. Rental income shall not be taken into account in determining a taxpayer's net profits from business, unless the rentals are received by a taxpayer in the ordinary course of the conduct of a trade or business of dealing in or leasing property of a character in respect of which the rentals are received. A taxpayer shall not be deemed to be engaged in the conduct of a trade or business of leasing property unless substantial services are rendered in connection with the leasing activities. The activity of net leasing property shall not constitute the conduct of a trade or business, unless the taxpayer shall be in the trade or business of dealing in such property and such property shall constitute inventory or stock-in-trade of the taxpayer. Rental income of a taxpayer which is not received in the ordinary course of the conduct of 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. Royalty income and income derived from patents or copyrights of a taxpayer shall not be taken into account in determining the taxpayer's net profits from business, unless the royalties or the income derived from patents or copyrights are derived by the taxpayer in the ordinary course of a trade or business of licensing intangible property. A taxpayer shall be considered to be engaged in a trade or business of licensing intangible property only if the taxpayer created the property or performed substantial services or incurred substantial costs with respect to the development or marketing of such property. Royalty income or income derived from patents or copyrights of a taxpayer which is not derived in the ordinary course of a trade or business of licensing intangible property 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.

6. Gains, profits and losses from the sale, exchange or disposition of property shall not be taken into account in determining a taxpayer's net profits from business, unless:

i. The gain, profit or loss is realized by the taxpayer in the ordinary course of the conduct of an activity of trading or dealing in such property and such activity constitutes the conduct of a trade or business; or

ii. The gain, profit or loss is realized by the taxpayer on the sale, exchange or other disposition of property which, in the hands of the taxpayer, constitutes property which is stock-in-trade, inventory or property held primarily for sale to customers in the ordinary course of a trade or business.

7. Gains, or profits and losses from the sale, exchange or disposition of property described in I.R.C. § 1231 shall not be taken into account in determining a taxpayer's net profits from business. Gains, or profits and losses not taken into account in determining a taxpayer's net profits from business shall be taken into account in determining a taxpayer's net gains or income from the disposition of property described in N.J.S.A. 54A:5-1c.

8. A taxpayer's distributive share of partnership income or loss shall not be taken into account in determining a taxpayer's net profits from business, regardless of the character of the partnership's activities. For rules governing the taxation of income derived by a taxpayer from a partnership, see N.J.A.C. 18:35-1.14.

(c) A taxpayer's net profits from business shall be determined by taking into account all costs and expenses incurred in the conduct thereof, except no deduction shall be allowed for taxes based on income; any civil, civil administrative or criminal penalty or fine assessed and collected for a violation of a state or Federal environmental law, or any other assessment described in N.J.S.A. 54A:5-1b(2); or any treble damages paid pursuant to N.J.S.A. 58:10-23.11fa. No deduction shall be allowed for any expense or loss which is not incurred in the ordinary course of the conduct of the taxpayer's trade or business.

(d) A taxpayer's net profits from business shall be determined in accordance with the method of accounting utilized in reporting the taxpayer's business income or loss for Federal income tax purposes.

1. A taxpayer's net profits from business shall be determined by including any income which is subject to tax under the Gross Income Tax Act but which is exempt from Federal income taxation (for example, interest on non-New Jersey municipal obligations) and by excluding any income which is exempt from tax under the Gross Income Tax Act but which is subject to Federal income taxation (for example, interest or gains attributable to obligations described in N.J.S.A. 54A:6-14).

2. A taxpayer's net profits from business shall be determined by taking into account expenses or losses incurred in the conduct of the taxpayer's trade or business which are properly deductible in accordance with the taxpayer's method of accounting, even if such deductions relate to expenses incurred in earning business income exempt from taxation under the Gross Income Tax Act, or expenses which are partly or wholly nondeductible for Federal income tax purposes under rules which limit the deductibility of particular business expenses under the Internal Revenue Code. For example, meal and entertainment expenses which constitute ordinary and necessary expenses incurred in the conduct of a trade or business are fully deductible in determining a taxpayer's net profits from business for Gross Income Tax purposes.

(e) In the case of a taxpayer who is engaged in more than one trade or business, the taxpayer's net profits from business shall be determined by taking into account the income, profits, expenses and losses of all such activities on a net consolidated basis.

New Rule, R.1994 d.110, effective March 7, 1994.
See: 25 N.J.R. 677(a), 26 N.J.R. 1241(b).

18:35-1.26 Combat zone; extension of time to file and pay

(a) Members of the Armed Forces of the United States and civilians providing support to the Armed Forces who are serving in a designated combat zone or were hospitalized outside the United States as a result of an injury received while serving in a combat zone are granted an extension of time for filing individual income tax returns and paying tax for the period of combat service or hospitalization, plus 180 days. This extension is also granted to such a taxpayer's spouse who files jointly. No penalty, interest or addition to tax will be assessed for late filing or late payment of the tax pursuant to this subsection (a).

(b) Taxpayers who file individual income tax returns and pay gross income tax late should attach a statement to the return which indicates their qualification for the tax relief granted pursuant to (a) above. The Director may request supporting information.

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

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

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

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

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

18:35-1.27 Interest on overpayments

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

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

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

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

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

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

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

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

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

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

New Rule, R.1994 d.133, effective March 21, 1994.
See: 26 N.J.R. 112(a), 26 N.J.R. 1372(b).

18:35-1.28 Commuter transportation benefits reporting by employer

(a) Pursuant to N.J.S.A. 54A:7-2, an employer shall provide an employee with a written statement as prescribed by the Director in (b) below showing the cost of commuter transportation benefits paid by the employer to the employee. Should said benefits exceed the amount of \$720.00 for the taxable year beginning on or after January 1, 1993, but before January 1, 1994, then the amount received by the employee in excess of \$720.00 shall be includable in gross income of the employee. For taxable years following thereafter, the Director shall adjust the limit, rounded down to the nearest \$5.00, in proportion to the change in the average consumer price index for all urban consumers in the New York and northeastern New Jersey and the Philadelphia areas, as reported by the United States Department of

Labor, from calendar year 1993 to the calendar year ending before the taxable year. Notice of the adjusted limit shall be published in the New Jersey Register. Amounts received by the employee not exceeding \$720.00 shall not be included in the employee's gross income.

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

New Rule, R.1995 d.19, effective January 3, 1995.
See: 26 N.J.R. 4173(a), 27 N.J.R. 143(a).
Public Notice: Commuter transportation benefit limit for 1995.
See: 27 N.J.R. 4737(a).

SUBCHAPTER 2. SETOFF OF INDIVIDUAL LIABILITY

18:35-2.1 Purpose

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

18:35-2.2 Definitions

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18:35-2.3 Procedure for setoff

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

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

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

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

Added (b).

18:35-2.4 Matching

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

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

(c) When a taxpayer requests a refund or rebate and that taxpayer has been identified through a complete match as an alleged debtor to a claimant agency, the Division does not have liquidated debt information on the debtor file, a three-part card will be sent to the claimant agency. Return of the proper card(s) to the division would certify the accuracy of the liquidated debt, advise whether the amount had been subsequently paid, and/or advise whether or not the doctor has requested a hearing or appeal in the matter.

(d) When a taxpayer requests a refund or rebate and that taxpayer has been identified through a complete match as an alleged debtor to a claimant agency, and the Division has liquidated debt information on the debtor file, the Division will generate a notice to the taxpayer in accordance with N.J.A.C. 18:35-2.5 and will also generate a two-part card to the agency. Return of the proper card(s) to the Division would advise whether the amount has been subsequently paid, and/or advise whether or not the debtor has requested a hearing or appeal in the matter.

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

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

Added first line to (c) and added (d).

18:35-2.5 Notice to taxpayer

Within 10 days after identification of a potential refund or rebate due the taxpayer and receipt of certified liquidated debt information from the claimant agency, whichever is later, the Division shall notify the alleged debtor of the proposed setoff and inform the alleged debtor of the right to make a timely request to the claimant agency for administrative resolution or for a hearing on the alleged debt and the proposed setoff.

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

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

Added "identification of a potential refund ... from the claimant agency".

18:35-2.6 Administrative resolution; claimant agency proceedings

(a) No later than 45 days from the date of the Division's notice to the alleged debtor, of the proposed setoff, the claimant agency shall notify the Division of any request by the alleged debtor for administrative resolution or for a hearing or of the satisfaction of the alleged debt. Such information shall allow the Division to:

1. Maintain the account on a hold status if an administrative resolution or a hearing has been requested;
2. Set off the alleged debt from the refund or rebate where the alleged debtor does not respond to the notice provided pursuant to N.J.A.C. 18:35-2.5 within 35 days of the notice date; or
3. Release the refund or rebate check to the debtor if the debt has been satisfied.

(b) Upon written request of the claimant agency, the Division shall extend the hold status of an affected check until a final decision by the claimant agency in order to accommodate the hearing process, where:

1. The Division has been notified that administrative resolution or a hearing has been requested pursuant to (a)1 above; and
2. Where a 30 day administrative resolution period provided pursuant to N.J.A.C. 1:1-5.4(b) has failed to result in a final agreement. The period for administrative resolution shall commence upon receipt by the claimant agency of a timely request for administrative resolution or for a hearing.

(c) After five days of the close of the period for administrative resolution, the Division shall automatically release the affected refund or rebate check unless notified in writing by the claimant agency that:

1. Administrative resolution of the matter has been accomplished pursuant to N.J.A.C. 1:1-5.4(a) and the agency has certified to the Division that the debtor has acknowledged the validity of the debt and setoff; or
2. The claimant agency has transmitted the matter as a contested case to the Office of Administrative Law pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. and the Division has been notified of the docket number of the proceeding.

18:35-2.7 Agency procedure; administrative resolution; hearing

(a) When an alleged debtor makes a timely request for administrative resolution for a hearing, the claimant agency shall initiate appropriate agency procedures pursuant to the

"New Jersey Uniform Administrative Procedure Rules, 1980", N.J.A.C. 1:1-1.1 et seq. The issues in an administrative resolution effort or a hearing shall include whether the claimed sum asserted as due and owing is correct and any other relevant matters. A nondebtor who claims to be a joint recipient of a refund or rebate check shall have standing to establish that fact and to contest the proposed setoff. If the claimant agency finds that an apportionment should be made in a particular case with respect to a joint entitlement, the matter shall be referred to the Division of Taxation and it will be presumed that each party is entitled to one half of the joint entitlement.

(b) Pending final agreement or final determination of the validity of the debt asserted by the claimant agency, no action shall be taken in furtherance of collection of that alleged debt through the setoff procedure established by this subchapter.

(c) No issues may be considered at the hearing which have been previously litigated. In cases where a legal judgment is in effect, the alleged debtor shall seek relief by returning to the court which produced the judgment.

Amended by R.1982 d.479, effective January 3, 1983.

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

Added that claims will be apportioned and presumed that each party is entitled to the joint entitlement. Old (c) deleted and new (c) added.

18:35-2.8 Referral to Office of Administrative Law; hearing

(a) After completing administrative resolution efforts in a contested case, the matter shall be filed forthwith with the clerk of the Office of Administrative Law, pursuant to the requirements of the "Administrative Procedure Act", P.L. 1968, c.419 (C.52:14B-1 et seq.) and P.L. 1978, c.67 (C.52:14F-1 et seq.), as amended and supplemented and the "New Jersey Uniform Administrative Procedure Rules, 1980", N.J.A.C. 1:1-1.1 et seq.

(b) An appeal to be taken from a final determination of the division of Taxation involving a tax matter shall be taken to the Tax Court. The Office of Administrative Law shall not hear tax matters.

18:35-2.9 Finalization of setoff by claimant agency; finalization by setoff

(a) Upon either final determination of the debt due and owing the claimant agency and exhaustion of time in which an appeal may be filed or upon the debtor's and/or joint recipient's default for failure to timely request review of the asserted setoff, the claimant agency shall forthwith certify the finalized debt to the Division and in default thereof, the Division shall no longer be obligated to hold the refund for setoff.

(b) Upon receipt by the Division of a certified finalized debt from the claimant agency, the Division shall finalize the setoff by transferring the net proceeds collected for

credit or payment in accordance with the provisions of N.J.A.C. 18:35-2.12 and by refunding any remaining balance to the debtor as if setoff has not occurred.

(c) Where judicial review is sought from a final agency determination, the agency shall advise the Division of such appeal and its docket number within three days of the filing of the appeal.

18:35-2.10 Notice to debtor of final setoff

Upon the finalization of setoff through administrative or judicial action, the Division shall notify the debtor in writing of the action taken along with an accounting of the action taken on any refund or rebate. If there is an outstanding balance after setoff, the notice under this section shall accompany the balance when disbursed.

18:35-2.11 Priorities in claims to setoff

(a) Priority in multiple claims to refunds or rebates allowed to be setoff under the provisions of this subchapter shall be based upon the time at which debtor files are received by the Division from the claimant agencies in descending order or priority, the earliest being first.

(b) Notwithstanding the general rule for priority set forth in (a) above, the priorities for setoff are as follows:

1. With respect to homestead rebates:
 - i. A local property tax deficiency;
 - ii. Any unpaid child support;
 - iii. A State tax deficiency;
 - iv. Other agencies, including the Internal Revenue Service, by date of claim.
2. With respect to gross income tax refunds:
 - i. Any unpaid child support;
 - ii. A State tax deficiency;
 - iii. Other agencies, including the Internal Revenue Service, by date of claim.

Amended by R.1993 d.94, effective February 16, 1993.
See: 24 N.J.R. 1967(b), 25 N.J.R. 711(c).
Revised (b).

18:35-2.12 Disposition of proceeds collected; collection assistance fees

(a) Upon effecting final setoffs, the Division shall periodically either write checks or effect credits through other methods, approved by the Division of Budget and Accounting to the respective claimant agencies for the net proceeds collected on their behalf.

(b) From the gross proceeds collected by the Division through setoff, the Division shall retain 10 percent. On and after January 1, 1985 the Division shall retain five percent of such proceeds. The amount shall be charged to the respective claimant agency as a collection assistance fee and may be subject to adjustment based upon experience.

Amended by R.1984 d.62, effective March 19, 1984.

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

Gross proceeds retained from "15" percent to "10" percent by the Division.

Amended by R.1984 d.579, effective December 17, 1984.

See: 16 N.J.R. 2760(b), 16 N.J.R. 3481(a).

(b) Added: "On and after ... such proceeds. The".

18:35-2.13 Accounting to the claimant agency; credit to debtor's obligation

(a) Simultaneously with the transmittal of a check or credit for net proceeds collected to a claimant agency, the Division shall provide the agency with an accounting of the setoffs finalized for which payment is being made.

1. The accounting shall, whenever possible, include:
 - i. The full names of the debtors;
 - ii. The gross proceeds collected per individual setoff;
 - iii. The net proceeds collected per setoff; and
 - iv. The collection assistance fee charged per setoff.

(b) Upon receipt by a claimant agency of a check representing net proceeds collected on a claimant agency's behalf by the Division and an accounting of the proceeds as specified under this section, the claimant agency shall credit the debtor's obligation with the gross proceeds collected.

(c) Under special circumstances and subject to the approval of the Director of the Division of Budget and Accounting, the Division may employ such alternative method of payment and billing as may be agreed upon with a claimant agency.