

**CHAPTER 35****NEW JERSEY GROSS INCOME TAX****Authority**

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

**Source and Effective Date**

R.1998 d.195, effective March 26, 1998.  
See: 30 N.J.R. 612(a), 30 N.J.R. 1428(a).

**Executive Order No. 66(1978) Expiration Date**

Chapter 35, New Jersey Gross Income Tax, expires on March 26, 2003.

**Chapter Historical Note**

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

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

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

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

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

Former Subchapter 3, Information Return for Business Employment Incentive Program/Business Relocation Assistance Grant Program of the New Jersey Economic Development Authority, was adopted as R.1997 d.533, effective December 15, 1977. See: 29 N.J.R. 4076(b), 29 N.J.R. 5313(a).

Pursuant to Executive Order No. 66(1978), Chapter 35, New Jersey Gross Income Tax, was readopted as R.1998 d.195, effective March 26, 1998. See: Source and Effective Date. See, also, section annotations.

**CHAPTER TABLE OF CONTENTS****SUBCHAPTER 1. GROSS INCOME—CATEGORIES AND CALCULATION**

- 18:35-1.1 Net profits from business
- 18:35-1.2 Employee business expenses not deductible
- 18:35-1.3 Partnerships and partners
- 18:35-1.4 Clergymen; self-employed

**SUBCHAPTER 2. EXCLUDABLE INCOME**

- 18:35-2.1 Interest and gains from certain obligations; taxable status of State and Federal securities
- 18:35-2.2 Qualified investment fund distributions
- 18:35-2.3 Employee accident or health insurance exclusion from taxable gross income
- 18:35-2.4 One-time election to exclude up to \$125,000 of gain on sale of principal residence; rollovers

**SUBCHAPTER 3. (RESERVED)****SUBCHAPTER 4. CREDITS AGAINST TAX**

- 18:35-4.1 Computation of credit for taxes paid to other jurisdictions
- 18:35-4.2 Credit for excess contributions

**SUBCHAPTER 5. NEW JERSEY SOURCE INCOME OF NONRESIDENTS**

- 18:35-5.1 Compensation received by nonresident professional athletes
- 18:35-5.2 Composite returns for nonresident partners

**SUBCHAPTER 6. EXTENSION OF TIME TO FILE; RETURN REQUIREMENTS**

- 18:35-6.1 Extension of time to file New Jersey gross income tax return
- 18:35-6.2 Combat zone; extension of time to file and pay
- 18:35-6.3 Signatures required on gross income tax return

**SUBCHAPTER 7. WITHHOLDING AND REPORTING OF TAX**

- 18:35-7.1 Employee defined
- 18:35-7.2 Requirement of withholding from employees
- 18:35-7.3 Quarterly filing of withholding returns accelerated payments; exceptions
- 18:35-7.4 Summer payment plan
- 18:35-7.5 Gambling winnings subject to withholding
- 18:35-7.6 Filing of withholding returns by professional athletic teams
- 18:35-7.7 Commuter transportation benefits reporting by employer
- 18:35-7.8 Information of employer withholding from new employees
- 18:35-7.9 Treasurer's approval of a business to receive a grant from both the Business Employment Incentive Program Act and the Business Relocation Assistance Act

**SUBCHAPTER 8. INFORMATION RETURNS**

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

**SUBCHAPTER 9. INTEREST AND PENALTIES**

- 18:35-9.1 Negligence and fraud penalties
- 18:35-9.2 Interest on overpayments

**SUBCHAPTER 10. SETOFF OF INDIVIDUAL LIABILITY**

- 18:35-10.1 Purpose
- 18:35-10.2 Definitions
- 18:35-10.3 Procedure for setoff
- 18:35-10.4 Matching
- 18:35-10.5 Notice to taxpayer
- 18:35-10.6 Administrative resolution; claimant agency proceedings
- 18:35-10.7 Agency procedure; hearing
- 18:35-10.8 Referral to Office of Administrative Law; hearing
- 18:35-10.9 Finalization of setoff by claimant agency; finalization by setoff
- 18:35-10.10 Notice to debtor of final setoff
- 18:35-10.11 Priorities in claims to setoff
- 18:35-10.12 Disposition of proceeds collected; collection assistance fees
- 18:35-10.13 Accounting to the claimant agency; credit to debtor's obligation

**SUBCHAPTER 1. GROSS INCOME—CATEGORIES AND CALCULATION****18:35-1.1 Net profits from business**

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

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

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

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

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

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

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

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

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

i. Income or loss from a partnership shall be taken into account determining the taxpayer's distributive share of partnership income described in N.J.S.A. 54A:5-1k. For rules governing the taxation of income derived by a taxpayer from a partnership, see N.J.A.C. 18:35-1.3.

ii. Income or loss from an S corporation shall be taken into account in determining the taxpayer's pro rata share of S corporation income described in N.J.S.A. 54A:5-1p.

iii. Income from an estate or trust shall be taken into account in determining the taxpayer's net gains or income from estates or trusts described in N.J.S.A. 54A:5-1h.

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

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

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

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

#### 18:35-7.4 Summer payment plan

(a) Certain deferred payments, authorized under a so-called "summer payment plan" under N.J.S.A. 18A:29-3, whereby an amount equal to 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).

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

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

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

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

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

1. With respect to the payment of winnings from the New Jersey Lottery; and
2. With respect to a payment of winnings from a slot machine, or a keno or bingo game.

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

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

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

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

(d) New Jersey gambling winnings subject to withholding means any payment from:

1. A wager placed in a sweepstakes, wagering pool or lottery, other than the New Jersey Lottery, but only if the proceeds from the wager exceed \$1,000; or

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

- i. Exceed \$1,000; and
- ii. Are at least 300 times as large as the amount of the wager.

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

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

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

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

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

New Rule, R.1988 d.407, effective September 6, 1988.  
 See: 19 N.J.R. 2255(a), 20 N.J.R. 2310(c).  
 Recodified from N.J.A.C. 18:35-1.20 by R.1998 d.195, effective April 20, 1998.  
 See: 30 N.J.R. 612(a), 30 N.J.R. 1428(a).

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

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

Recodified from N.J.A.C. 18:35-1.22(c) and amended by R.1998 d.195, effective April 20, 1998.  
 See: 30 N.J.R. 612(a), 30 N.J.R. 1428(a).  
 Changed N.J.A.C. references.

#### 18:35-7.7 Commuter transportation benefits reporting by employer

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

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

New Rule, R.1995 d.19, effective January 3, 1995.  
 See: 26 N.J.R. 4173(a), 27 N.J.R. 143(a).  
 Public Notice: Commuter transportation benefit limit for 1995.  
 See: 27 N.J.R. 4737(a).  
 Public Notice: Commuter transportation benefit limit for 1995.  
 See: 28 N.J.R. 2639(a).  
 Public Notice: Commuter transportation benefit limit for 1996.  
 See: 28 N.J.R. 5510(a).  
 Public Notice: Commuter transportation benefit limit for 1996.  
 See: 29 N.J.R. 813(c).  
 Recodified from N.J.A.C. 18:35-1.28 by R.1998 d.195, effective April 20, 1998.  
 See: 30 N.J.R. 612(a), 30 N.J.R. 1428(a).

Public Notice: Commuter transportation benefit limit for 1998.  
 See: 30 N.J.R. 2533(a).

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

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

1. A list of the names, job titles and job locations of existing employees of said business not subject to a grant under the Act;
2. A list of the names and date hired and/or the date each new employee began employment at the project of said business in an eligible position for grant purposes under the Act, their base salary, overtime and bonuses paid, and the amount of New Jersey gross income tax withheld from each new employee and their city and state of residence;
3. The aggregate amount of payroll and withholdings for all employees in New Jersey;
4. The percentage and term of any grant pursuant to the Business Employment Incentive Program Agreement;
5. The amount of the grant to be disbursed to the business pursuant to the Business Relocation Assistance Act requiring the Treasurer's certification and the percentage upon which the grant is based;
6. The percentage and term of the grant to be disbursed to the business pursuant to the Business Employment Incentive Program Agreement requiring the Treasurer's certification;
7. A statement as to whether the applicant business has followed the criteria as set forth in guidelines promulgated by Economic Development Authority under the Act; and
8. A list of eligible positions that have been filled by persons who are rehired from a bona fide layoff or transferred from another company.

(b) The Director, upon receipt of the information referred to in (a) above, shall send to each business awarded a grant under the Act, a Declaration of Annual Withholding Information for Purposes of the Business Employment Incentive Program, Form NJ-9000, to be completed and returned not later than May 7 to New Jersey Division of Taxation, PO Box 445, Trenton, NJ 08625-0445.

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