

(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.