

CHAPTER 35

NEW JERSEY GROSS INCOME TAX

Authority

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

Source and Effective Date

R.2003 d.285, effective June 20, 2003.
See: 35 N.J.R. 1384(a), 35 N.J.R. 3386(a).

Chapter Expiration Date

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

Chapter Historical Note

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

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

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

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

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

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

Pursuant to Executive Order No. 66(1978), Chapter 35, New Jersey Gross Income Tax, was readopted as R.1998 d.195, effective March 26, 1998. See: 30 N.J.R. 612(a), 30 N.J.R. 1428(a).

Chapter 35, New Jersey Gross Income Tax, was readopted as R.2003 d.285, effective June 20, 2003. See: Source and Effective Date. See, also, section annotations.

Subchapter 2, Excludable Income, was renamed Exclusions and Deductions by R.2007 d.55, effective February 5, 2007. See: 38 N.J.R. 4658(a), 39 N.J.R. 546(a).

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
- 18:35-1.5 S corporations and S corporation shareholders

SUBCHAPTER 2. EXCLUSIONS AND DEDUCTIONS

- 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 Election to exclude up to \$500,000 of gain on sale of principal residence
- 18:35-2.5 Pensions and annuities

- 18:35-2.6 Qualified State Tuition Program; education individual retirement account
- 18:35-2.7 Health Care Enterprise Zones

SUBCHAPTER 3. ESTIMATED TAX

- 18:35-3.1 Estimated tax
- 18:35-3.2 Failure to file declaration or underpayment of estimated tax

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
- 18:35-4.3 Earned Income Tax Credit

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
- 18:35-6.4 Electronic filing methods

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
- 18:35-7.10 Domestic employees

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 11. FILING FEE PAYMENTS BY PARTNERSHIPS

- 18:35-11.1 Definitions
- 18:35-11.2 Apportionment of the partnership fee
- 18:35-11.3 Annual return; payment of tax or fee due; extensions of time to file tentative return; estimated payment
- 18:35-11.4 Installment payment
- 18:35-11.5 Penalty and interest
- 18:35-11.6 Partnership examples of the imposition of the filing fee

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 em-

ployee, as defined in N.J.A.C. 18:35-7.1, shall not be taken into account in determining the taxpayer's net profits from business, but rather shall be taxed under N.J.S.A. 54A:5-1a (salaries, wages, etc.).

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

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

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

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

i. A complete liquidation of a business is deemed to occur in the tax year when the business discontinues all business activities and all its assets have been distributed.

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

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. 18:35-10.

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)l(iii); redesignated old (a)l(iii) and iv to (a)l(iv) 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).

Recodified from N.J.A.C. 18:35-1.17 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 (d), changed N.J.A.C. reference.

18:35-4.3 Earned Income Tax Credit

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

“Gross income” means gross income required to be reported under the New Jersey Gross Income Tax Act, N.J.S.A. 54A:1-1 et seq., other than income excludable from the gross income tax return, but before reduction by any applicable exemptions, deductions and credits received during the taxable year by the individual or married individuals filing a joint return; and, in the case of a part-year resident, gross income means gross income a part-year resident would have reported if the part-year resident had been a resident of New Jersey for the entire taxable year.

“Federal earned income tax credit” means the credit against Federal income tax provided under section 32 of the Federal Internal Revenue Code, 26 U.S.C. § 32.

“New Jersey Earned Income Tax Credit” means the credit against gross income tax provided under N.J.S.A. 54A:4-6 to 4-10.

“Qualifying child” means qualifying child as meant under section 32 of the Federal Internal Revenue Code, 26 U.S.C. § 32.

“Resident” means resident as defined under the New Jersey Gross Income Tax Act, N.J.S.A. 54A:1-1 et seq.

(b) A resident individual who has gross income of \$20,000 or less for the taxable year and who files as a head of household or surviving spouse for Federal and gross income tax purposes is eligible for a New Jersey Earned Income Tax Credit. The New Jersey credit shall be calculated by multiplying the applicable percentage found in (d) below times the Federal earned income tax credit claimed by and allowed to the resident under section 32 of the Federal Internal Revenue Code, 26 U.S.C. § 32. The resident claimant must also satisfy the requirements found in (e) below.

(c) Married resident individuals who have combined gross income of \$20,000 or less and who file a joint return for Federal and gross income tax purposes are eligible for a New Jersey Earned Income Tax Credit. The New Jersey credit shall be calculated by multiplying the applicable percentage found in (d) below times the Federal earned income tax credit claimed by and allowed to the couple under section 32 of the Federal Internal Revenue Code, 26 U.S.C. § 32. The resident claimants must also satisfy the requirements found in (e) below.

(d) The New Jersey Earned Income Tax Credit is the following percentage of the Federal earned income tax credit:

1. For the taxable year beginning on or after January 1, 2000 (but before January 1, 2001), 10 percent of the Federal earned income tax credit allowed and claimed for the same taxable year;
2. For the taxable year beginning on or after January 1, 2001 (but before January 1, 2002), 15 percent of the Federal earned income tax credit allowed and claimed for the same taxable year;
3. For the taxable year beginning on or after January 1, 2002 (but before January 1, 2003), 17.5 percent of the Federal earned income tax credit allowed and claimed for the same taxable year; and
4. For taxable years beginning on or after January 1, 2003, 20 percent of the Federal earned income tax credit allowed and claimed for the same taxable year.

(e) In addition to the requirements in (b) and (c) above, to qualify for the New Jersey Earned Income Tax Credit:

1. The individual or individuals claiming the New Jersey Earned Income Tax Credit must claim and be allowed a Federal earned income tax credit, for the same taxable year, that is based on the individual or individuals having at least one "qualifying child";

2. The individual or individuals shall file a New Jersey Gross Income Tax return, complete the schedule for the earned income tax credit and provide such information, documentation and copies of Federal income tax forms as required by the Director of the Division of Taxation; and

3. If the individual claiming the New Jersey Earned Income Tax Credit is married, except for an individual whose tax filing status is "head of household" or "surviving spouse" for Federal and gross income tax purposes, the individual and the individual's spouse shall file a joint return to claim the New Jersey Earned Income Tax Credit.

(f) The New Jersey Earned Income Tax Credit shall be deemed to be a credit towards or payment of gross income tax on the 15th day of the fourth month following the close of the taxable year for which a credit is claimed. Any claim for the credit must be filed by the date established under N.J.S.A. 54A:9-8 (generally, three years from the filing of the return or two years from the date of payment of the tax, whichever is later).

(g) If a part-year resident of New Jersey claims, and is qualified for, a New Jersey Earned Income Tax Credit, the part-year resident's credit amount shall be pro-rated based on that proportion which the total number of months of the claimant's residency within the taxable year bears to 12 in that year.

(h) If a claimant for the New Jersey Earned Income Tax Credit asks the Federal Internal Revenue Service to calculate the Federal earned income tax credit, the claim for the New Jersey Earned Income Tax Credit shall be incomplete until the Division of Taxation receives information from the Federal Internal Revenue Service concerning the amount, if any, of the Federal earned income tax credit.

(i) The New Jersey Earned Income Tax Credit of an individual, or of married individuals filing jointly, shall be reduced by the amount of any New Jersey State tax deficiency owed by the individual or individuals and by the amount of any indebtedness authorized for setoff under N.J.S.A. 54A:9-8.1 or under any other pertinent State or Federal law. (For set-off policies and procedures, see N.J.A.C. 18:2-5.4 and N.J.A.C. 18:35-10.) After all such reductions, any remaining New Jersey Earned Income Tax Credit

amount shall be refunded to the individual or individuals as an overpayment of gross income tax, either separately or in combination with any other overpayment of gross income tax.

(j) If an individual or married couple claimed a New Jersey Earned Income Tax Credit for a taxable year for which the individual or couple's Federal earned income tax credit was changed or disallowed by the U.S. Internal Revenue Service or other competent authority, the individual or couple shall notify the Division of Taxation, as required by N.J.S.A. 54A:8-7, within 90 days of the final determination.

(k) If an individual or married couple receives a New Jersey Earned Income Tax Credit amount for which the individual or couple is not qualified, the Division of Taxation shall recover the amount from the individual or couple in the same manner as the Division recovers erroneous refunds of gross income tax under the provisions of the Gross Income Tax Act, N.J.S.A. 54A:1-1 et seq. Also, the individual or couple will be subject to such other sanctions and penalties as may apply in the circumstances.

(l) The provisions of this section are illustrated by the following examples:

Example 1: Terry has New Jersey gross income of \$19,500 for the taxable year, which is wage income, and which does not include \$1,000 that she elected to defer into a "section 401(k)" pension plan. She has a "qualifying child" and she qualifies for and claims, on her Federal income tax return, a Federal earned income tax credit that is based on having a qualifying child. She is eligible for a New Jersey Earned Income Tax Credit. The \$1,000 deferral does not cause her income to exceed the \$20,000 income limit for qualifying for the New Jersey credit, because qualified section 401(k) deferrals are excludable from New Jersey gross income. (Please note, however, elective deferrals for other types of pension plans are not excludable from New Jersey gross income.)

Example 2: Sam has \$10,000 in New Jersey gross income for the taxable year, consisting of self-employment income, and he does not have a "qualifying child." He qualifies for and claims a small Federal earned income tax credit. He is not eligible for a New Jersey Earned Income Tax Credit, because his Federal earned income tax credit is not based on having a qualifying child.

New Rule, R.2002 d.2, effective January 7, 2002.

See: 33 N.J.R. 2735(a), 33 N.J.R. 3280(a), 34 N.J.R. 298(a).