

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).

Chapter Expiration Date

In accordance with N.J.S.A. 52:14B-5.1c, Chapter 35, New Jersey Gross Income Tax, expires on September 22, 2003. See: 35 N.J.R. 1384(a).

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: 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
- 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

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).

18:35-10.6 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. Setoff 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. 18:35-10.5 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.

Recodified from N.J.A.C. 18:35-2.6 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 (a)2, changed N.J.A.C. reference.

18:35-10.7 Agency procedure; 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. Recodified from N.J.A.C. 18:35-2.7 by R.1998 d.195, effective April 20, 1998.

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

18:35-10.8 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.

Recodified from N.J.A.C. 18:35-2.8 by R.1998 d.195, effective April 20, 1998.

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

18:35-10.9 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. 18:35-10.12 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.

Recodified from N.J.A.C. 18:35-2.9 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 (b), changed N.J.A.C. reference.

18:35-10.10 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.

Recodified from N.J.A.C. 18:35-2.10 by R.1998 d.195, effective April 20, 1998.

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

18:35-10.11 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).

Recodified from N.J.A.C. 18:35-2.11 by R.1998 d.195, effective April 20, 1998.

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

18:35-10.12 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".

Recodified from N.J.A.C. 18:35-2.12 by R.1998 d.195, effective April 20, 1998.

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

18:35-10.13 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.

Recodified from N.J.A.C. 18:35-2.13 by R.1998 d.195, effective April 20, 1998.

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