

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.2008 d.282, effective August 21, 2008.
See: 40 N.J.R. 2222(a), 40 N.J.R. 5245(b).

Chapter Expiration Date

Chapter 35, New Jersey Gross Income Tax, expires on August 21, 2013.

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: 35 N.J.R. 1384(a), 35 N.J.R. 3386(a).

Subchapter 11, Filing Fee Payments by Partnerships, was adopted as Special Adopted and Concurrent Proposed New Rules by R.2003 d.135, effective February 17, 2003 (to expire August 26, 2003). See: 35 N.J.R. 1573(a). The concurrent proposal of Subchapter 11, Filing Fee Payments by Partnerships, was adopted by R.2003 d.370, effective August 22, 2003. See: 35 N.J.R. 1573(a), 35 N.J.R. 4310(a).

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 35, New Jersey Gross Income Tax, was readopted as R.2008 d.282, effective August 21, 2008. 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 Clergy; self-employed
- 18:35-1.5 S corporations and S corporation shareholders
- 18:35-1.6 Civil unions

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
- 18:35-4.4 Film 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 Payment of contributions; wage and contribution reporting
- 18:35-7.5 Summer payment plan
- 18:35-7.6 Gambling winnings subject to withholding
- 18:35-7.7 Filing of withholding returns by professional athletic teams
- 18:35-7.8 Commuter transportation benefits reporting by employer
- 18:35-7.9 Information of employer withholding from new employees
- 18:35-7.10 Treasurer's approval of a business to receive a grant from both the Business Employment Incentive Program Act and the Business Relocation Assistance Act
- 18:35-7.11 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 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