

CHAPTER 35

NEW JERSEY GROSS INCOME TAX

Authority

N.J.S.A. 54A:9-8.1 through 54A:9-8.3, 54A:9-17(a) and 54:50-1.

Source and Effective Date

R.1993 d.315, effective June 4, 1993.
See: 25 N.J.R. 1500(a), 25 N.J.R. 2906(b).

Executive Order No. 66(1978) Expiration Date

Chapter 35, New Jersey Gross Income Tax, expires on June 4, 1998.

Chapter Historical Note

All provisions of this chapter became effective prior to September 1, 1969.

1976 Revisions: Amendments became effective December 14, 1976 as R.1976 d.400. See: 9 N.J.R. 48(c). Further amendments became effective December 17, 1976 as R.1976 d.424. See: 9 N.J.R. 52(b).

1977 Revisions: Amendments became effective January 26, 1977 as R.1977 d.19. See: 9 N.J.R. 101(a). Further amendments became effective March 18, 1977 as R.1977 d.94. See: 9 N.J.R. 199(c). Further amendments became effective May 1, 1977 as R.1977 d.149. See: 9 N.J.R. 193(a), 9 N.J.R. 295(b). Further amendments became effective December 6, 1977 as R.1977 d.460. See: 10 N.J.R. 45(a).

1979 Revisions: Amendments became effective February 8, 1979 as R.1979 d.56. See: 11 N.J.R. 152(a). Further amendments became effective October 26, 1979 as R.1979 d.433. See: 11 N.J.R. 525(b), 11 N.J.R. 650(b). Further amendments became effective December 5, 1979 as R.1979 d.475. See: 11 N.J.R. 594(a), 12 N.J.R. 56(c).

1981 Revisions: Amendments became effective January 8, 1981 as R.1981 d.6. See: 12 N.J.R. 676(a), 13 N.J.R. 111(d).

1982 Revisions: Subchapter 2 became effective May 17, 1982 as R.1982 d.161. See: 13 N.J.R. 940(a), 14 N.J.R. 474(b).

1983 Revisions: Amendments became effective January 3, 1983 as R.1983 d.479. See: 14 N.J.R. 705(b), 15 N.J.R. 37(b). Further amendments became effective January 17, 1984 as R.1983 d.618. See: 15 N.J.R. 1566(a), 16 N.J.R. 149(a). This chapter was readopted pursuant to Executive Order 66(1978) effective August 12, 1983 as R.1983 d.353. See: 15 N.J.R. 1091(a), 15 N.J.R. 1488(c). Further amendments became effective November 16, 1987 as R.1987 d.476. See: 19 N.J.R. 1182(a), 19 N.J.R. 2201(c). Further amendments became effective December 19, 1983 as R.1983 d.586. See: 15 N.J.R. 1570(a), 15 N.J.R. 2175(c).

1984 Revisions: Amendments became effective March 19, 1984 as R.1984 d.62. See: 15 N.J.R. 2031(a), 16 N.J.R. 556(a). Further amendments became effective December 17, 1984 as R.1984 d.579. See: 16 N.J.R. 2760(b), 16 N.J.R. 3481(a).

1985 Revisions: Amendments became effective September 3, 1985 as R.1985 d.454. See: 17 N.J.R. 1643(a), 17 N.J.R. 2146(a).

1986 Revisions: Emergency Rule became effective April 15, 1986 (expires May 15, 1986) as R.1986 d.169. See: 18 N.J.R. 999(a).

1988 Revisions: This chapter was readopted pursuant to Executive Order No. 66(1978), effective June 7, 1988 with amendments effective July 5, 1988 as R.1988 d.299. See: 20 N.J.R. 514(a), 20 N.J.R. 1571(b). Amendments became effective September 6, 1988 as R.1988 d.407. See: 19 N.J.R. 2255(b), 20 N.J.R. 2310(c). Further amendments became effective September 6, 1988 as R.1988 d.419. See: 20 N.J.R. 515(a), 20 N.J.R. 2319(c).

Pursuant to Executive Order No. 66(1978), Chapter 35 was readopted as R.1993 d.315. See: Source and Effective Date. See, also, section annotations for specific rulemaking activity.

CHAPTER TABLE OF CONTENTS

SUBCHAPTER 1. GENERAL PROVISIONS

- 18:35-1.1 Summer payment plan
- 18:35-1.2 Clergymen; self-employed; income; expenses
- 18:35-1.3 Declaration of estimated tax; 1976
- 18:35-1.4 Information furnished at source
- 18:35-1.5 Information furnished at the source; payers other than interest and dividends
- 18:35-1.6 Treatment of capital gains and losses pursuant to P.L. 1976, c.47
- 18:35-1.7 Accelerated returns and payment of certain employers' withheld taxes
- 18:35-1.8 Information furnished at source; 1977 and subsequent returns
- 18:35-1.9 Reporting of interest on certain obligations; taxable status of State and Federal securities
- 18:35-1.10 Quarterly or semiannual filing of withholding returns and payment of certain employers' withheld taxes; exception as to seasonal employers
- 18:35-1.11 Time for filing information returns
- 18:35-1.12 Computation of tax credit
- 18:35-1.13 One-time election to exclude up to \$100,000 of gain on sale of principal residence; rollovers
- 18:35-1.14 Partnerships and partners
- 18:35-1.15 Employee accident or health insurance exclusion from taxable gross income
- 18:35-1.16 (Reserved)
- 18:35-1.17 Credit for excess contributions
- 18:35-1.18 Extension of time to file
- 18:35-1.19 Negligence and fraud penalties
- 18:35-1.20 Gambling winnings defined
- 18:35-1.21 Employee defined
- 18:35-1.22 Requirement of withholding from employees
- 18:35-1.23 Employee business expenses not deductible
- 18:35-1.24 Qualified investment fund distributions
- 18:35-1.25 Net profits from business
- 18:35-1.26 Combat zone; extension of time to file and pay
- 18:35-1.27 Interest on overpayments
- 18:35-1.28 Commuter transportation benefits reporting by employer
- 18:35-1.29 Compensation received by nonresident professional athletes

SUBCHAPTER 2. SETOFF OF INDIVIDUAL LIABILITY

- 18:35-2.1 Purpose
- 18:35-2.2 Definitions
- 18:35-2.3 Procedure for setoff
- 18:35-2.4 Matching
- 18:35-2.5 Notice to taxpayer
- 18:35-2.6 Administrative resolution; claimant agency proceedings
- 18:35-2.7 Agency procedure; administrative resolution; hearing
- 18:35-2.8 Referral to Office of Administrative Law; hearing
- 18:35-2.9 Finalization of setoff by claimant agency; finalization by setoff
- 18:35-2.10 Notice to debtor of final setoff
- 18:35-2.11 Priorities in claims to setoff
- 18:35-2.12 Disposition of proceeds collected; collection assistance fees
- 18:35-2.13 Accounting to the claimant agency; credit to debtor's obligation

SUBCHAPTER 1. GENERAL PROVISIONS

18:35-1.1 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).

18:35-1.2 Clergymen; self-employed; income; expenses

Duly ordained clergymen are considered to be self-employed individuals for the purposes of the New Jersey Gross Income Tax Act. Accordingly, salaries, fees, honorariums, allowances and other remuneration paid to clergymen for services rendered are not subject to withholding. Therefore, income does not include the rental value of a residence provided for a clergyman by his church or congregation.

R.1976 d.424, effective December 17, 1976.
See: 9 N.J.R. 52(b).

18:35-1.3 Declaration of estimated tax; 1976

(a) A declaration of estimated tax for 1976 must be made if your total New Jersey estimated tax is more than \$100. "Estimated tax" means the amount which an individual estimates to be his income tax for the taxable year less the amount which he estimates to be the sum of any credits allowable against the tax.

(b) In general, a declaration is not required to be filed if you expect that your 1976 tax return form NJ 1040, will show a tax refund, or a tax balance due to be paid to New Jersey of \$100 or less in excess of any credits.

(c) Calendar-year taxpayers should determine their expected gross income, deductions and credits upon the basis of the facts and circumstances existing at the time prescribed for filing the 1976 declaration as well as those reasonably to be anticipated for 1976. Use the worksheet as a guide for computing your estimated tax.

1. Calendar-year taxpayers should estimate their tax for the period July 1, 1976 to December 31, 1976. Exemptions and credits shall be one half of the full amount. The allowance for each personal exemption is \$500. The tenant's homestead credit is generally \$32.50 (\$50 for taxpayers 65 or over, permanently or totally disabled, or certain surviving spouses). Fiscal year taxpayers should estimate their tax from July 1, 1976, to the close of their fiscal year. Exemptions and credits shall be prorated accordingly.

(d) A declaration of estimated tax must be filed for 1976 on or before January 15, 1977. If a final return is filed on or before February 15, 1977, no declaration need be filed.

(e) A declaration of estimated tax shall be filed with the New Jersey Division of Taxation, Post Office Box 1848, Trenton, New Jersey 08625.

(f) The estimated tax shall be paid at the time the declaration is filed. Make your checks or money orders payable to State of New Jersey—TGI. An individual may elect to pay his estimated tax prior to the date prescribed for its payment.

NOTE: You should check your income tax to be withheld in computing your estimated tax.

(g) Failure to file declaration or underpayment of estimated tax: If any taxpayer fails to file a declaration of estimated tax or fails to pay all or any part of an installment of estimated tax, he shall be deemed to have made an underpayment of estimated tax.

Editor's Note: In addition to these rules, a declaration of estimated tax, form NJ-TGI 1040-ES, was filed but is not reproduced herein. Further information on this form is available from the Division of Taxation, P.O. Box 1848, Trenton, N.J. 08625.

(h) Rules on penalties are:

1. If the amount paid with the declaration of estimated tax, paid on or before January 15, 1977, is at least 80 per cent of the taxpayer's tax liability, no penalty will be imposed for underpayment.

2. As an alternative to paragraph 1 above, no penalty will be imposed for underpayment of final tax liability if the estimated tax paid with the declaration of estimated tax is less than 50 per cent of taxpayer's adjusted gross income reportable and reported on his personal 1975 Federal income tax return (Federal form 1040), multiplied by 75 per cent and the applicable New Jersey gross income tax rate.

1. A copy of the magnetic tape provided to the Internal Revenue Service (with the same specifications) in lieu of forms 1099 for the full calendar year, edited to delete all listings of recipients of less than \$1,000; or
2. A copy of the tape provided to the Internal Revenue Service (as above) without deleting recipients of less than \$1,000; or
3. Copies of all forms 1099 submitted to the Internal Revenue Service for the full calendar year on amounts of \$1,000 or more (either an additional carbon or photocopy of the form 1099); or
4. Copies of all forms 1099 submitted to the Internal Revenue Service for the full calendar year.

R.1977 d.460, effective December 6, 1977.
See: 10 N.J.R. 45(a).

18:35-1.9 Reporting of interest on certain obligations; taxable status of State and Federal securities

(a) Gross income shall not include interest on obligations:

1. Issued by or on behalf of New Jersey or any county, municipality, school or other district, agency, authority, commission, instrumentality, public corporation (including one created or existing pursuant to agreement or compact with this or any other state), body corporate and politic or political subdivision of New Jersey:
 - i. Specifically included within this subsection is interest received with respect to Certificates of Participation issued in connection with lease-purchase agreements, provided that the liability for payments of principal and interest is solely that of a New Jersey governmental entity;

2. Those obligations which are statutorily free from State or local taxation under any act of New Jersey or under the laws of the United States.

(b) Under the authority of N.J.S.A. 54A:9-17, which empowers the Division to require such facts and information to be reported as are deemed necessary to enforce the provisions of the Gross Income Tax Act, every person required to file a resident New Jersey gross income tax return (NJ-1040) for a taxable year shall report on such return the amount of interest received or accrued during the taxable year which is exempt from the gross income tax.

(c) The term "net gains or income" shall not include gains or income derived from obligations whose interest is exempt from tax under paragraph 1 of this subsection. Losses from sales of such exempt securities shall not be taken into account in the computation of gains from disposition of property. A list of various securities follows, together with an indication of whether the interest and the gains therefrom are taxable or exempt:

1. Federal securities:

Security	Interest
i. Asian Development Bank	T
ii. Bank for Cooperatives	E

iii. Environmental Financing Authority	T
iv. Export-Import Bank of the United States ("Eximbank"):	
(1) Series 1978-B debentures	E
(2) Participation certificates (reversal of Counsel opinion dated 8/29/67)	T
v. Federal Deposit Insurance Corporation obligations	E
vi. Federal Housing Authority (F.H.A.)	E
vii. Farmers Home Administration	E
viii. Federal Financing Bank	E
ix. Federal Home Loan Bank	E
x. Federal Home Loan Mortgage Corp.	T
xi. Federal Intermediate Credit Banks	E
xii. Federal Land Banks	E
xiii. Federal National Mortgage Association (Fannie Mae):	
(1) Interest on bonds and debentures	T
(2) Guaranteed Participation Certificates	T
xiv. Federal Savings and Loan Insurance Corporation obligations	E
xv. General Services Administration	E
xvi. Government National Mortgage Association (Ginnie Mae)	T
xvii. Guam	E
xviii. H.U.D./New Communities	E
xix. H.U.D. Public Housing Notes and Bonds (Tax free in State of issuance)	E
(In state of issuance)	
(1) If issued in the District of Columbia, Puerto Rico, the Virgin Islands, they are exempt from all State tax.	
(If issued in other states)	T
xx. Inter-American Development Bank Bonds	T
xxi. International Monetary Fund and Bank for Reconstruction and Development (World Bank)	T
xxii. Jonathan Development Corporation (Obligations guaranteed under New Communities Act of 1968)	T
xxiii. Merchant Marine	E
xxiv. Panama Canal Zone Bonds specifically exempt from tax by 31 USC 744 and 745	E
xxv. Production Credit Associations	E
xxvi. Puerto Rico Water Resources—4.2 per cent bonds due 1/1/89—Interest on Bonds	E
xxvii. Puerto Rico	E
xxviii. R.F.K. Stadium Bonds	T
xxix. Small Business Administration	E
xxx. Student Loan Marketing Association	E
xxxi. Tennessee Valley Authority	E
xxxii. U.S. Postal Service	E
xxxiii. U.S. Treasury	E
xxxiv. U.S. Treasury Bills	E
xxxv. USAVE Certificates—Farmers Home Administration Insured Loan Notes	Partially

xxxvi. Virgin Islands
 xxxvii. Washington Metropolitan Area
 Transit Authority Bonds

E
 T

(d) Gross income shall include interest and gains from obligations issued by or on behalf of other states of the United States, and foreign governments.

R.1978 d.284, effective August 15, 1978.
 See: 10 N.J.R. 299(a), 10 N.J.R. 406(f).
 Amended by R.1988 d.407, effective September 6, 1988.
 See: 19 N.J.R. 2255(a), 20 N.J.R. 2310(c).
 Added "State"; and (a)1i.
 Amended by R.1992 d.141, effective March 16, 1992.
 See: 23 N.J.R. 177(a), 24 N.J.R. 970(a).
 Added (b); redesignated existing (b)-(c) as (c)-(d) without change.

18:35-1.10 Quarterly or semiannual filing of withholding returns and payment of certain employers' withheld taxes; exception as to seasonal employers

(a) Effective for the semiannual period beginning on January 1, 1979, where the aggregate amount required to be deducted and withheld by any employer is less than \$25 in a calendar month and the aggregate for the semiannual period ending on June 30 or December 31 can reasonably be expected to be less than \$150, the employer return and payment of withheld taxes for such period may be made on or before July 31 for the semiannual period ending on June 30 and on or before January 31 for the semiannual period ending on December 31.

(b) Effective for the calendar quarter beginning on January 1, 1979, where the aggregate amount required to be deducted and withheld by any employer is \$200 or less in each month of a calendar quarter and the aggregate for the quarterly period ending on March 31, June 30, September 30, or December 31 can reasonably be expected to be less than \$600, the employer return and payment of withheld taxes for such period may be made on a quarterly basis on or before the 15th day of the month following the close of the calendar quarter period ending on March 31, June 30 or September 30. Any return due with respect to the calendar quarter ending on December 31 shall be filed and taxes paid on or before January 31 following the close of said calendar quarter.

(c) Where the aggregate amount required to be deducted and withheld by any employer exceeds \$200 in a calendar month, the employer return and payment of withheld taxes for such monthly period and for prior months in a calendar quarter must be made on or before the 15th day of the month following the close of such month or months during the calendar quarter period. In the event an employer monthly return and payment of withheld taxes is not required, an employer return and payment of withheld taxes for the quarterly period ending on March 31, June 30, or September 30, may be made on or before the 15th day of the month following the close of such quarter. Any return due with respect to the calendar quarter ending on December 31 shall be filed and taxes paid on or before January 31 following the close of said calendar quarter.

(d) Subsections (a), (b) and (c) shall not apply to an employer engaged in a business operating seasonally. Consecutive returns for each calendar month accounting for all tax withheld must be filed by a seasonal employer who is required to report monthly. Where the amount required to be deducted can reasonably be expected to be \$18,000 or more for a semi-annual period, a seasonal employer shall file semi-monthly employer returns with payment of the taxes withheld as provided under section 1.7 of these rules. If no tax was withheld during a particular month, a return is still required to be filed for such month with the reason for nonwithholding stated on the back, the date of the last payment of wages, and the date when the employer expects to resume paying taxes.

R.1978 d.319, effective September 13, 1978.
 See: 10 N.J.R. 361(b), 10 N.J.R. 457(a).

18:35-1.11 Time for filing information returns

The time for filing of information returns to be supplied to the Division of Taxation by all filers of form 1099 with the Federal Internal Revenue Service is extended to February 28, 1979.

R.1979 d.56, effective February 8, 1979.
 See: 11 N.J.R. 152(a).

18:35-1.12 Computation of tax credit

(a) The following provisions shall govern the computation of the tax credit by reason of any income or wage tax paid to another state or political subdivision of such state under the New Jersey Gross Income Tax Act.

1. N.J.S.A. 54A:4-1 provides for a credit against the New Jersey gross income tax as follows: Resident credit for tax of another state.

i. A resident taxpayer shall be allowed to credit against the tax otherwise due under this act for the amount of any income tax or wage tax imposed for the taxable year by another state of the United States or political subdivision of such state, or by the District of Columbia, with respect to income which is also subject to tax under this act.

ii. The credit provided under this section shall not exceed the proportion of the tax otherwise due under this act that the amount of the taxpayer's income subject to tax by the other jurisdiction bears to his entire New Jersey income.

2. The credit against the New Jersey tax applies with respect to the income tax or wage tax paid in the other state or political subdivision thereof on income which is also subject to tax under the New Jersey Act. Therefore, there shall be excluded from the income in the other state any income which is not subject to tax under the New Jersey law.