

**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 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

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**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).

(b) Amounts received by an employee on account of personal injury or sickness qualify for exclusion from taxable gross income when received under the provisions of an employee accident or health insurance plan which satisfies the following requirements:

1. The payments must be compensation for wage loss which results from absence due to injury or sickness of the employee; and
2. The payments must have a requisite certainty under an enforceable contractual obligation under the plan (see (e) below); and
3. The payments must not relate to sick leave wage continuation, the taking of which is largely discretionary and the payments are made regardless of the reason for absence from work.

(c) The exclusion from taxable gross income applies to payments to employees under a health or accident insurance plan regardless of whether insurance coverage is with a commercial insurance company to which premiums are paid by both employees and employer or solely by the employer; or whether insurance coverage is provided by an employer's self-insured plan for which no insurance premiums are paid by the employees.

(d) The exclusion from taxable gross income applies to payments required to be made to employees under the State mandated temporary disability benefit plan pursuant to the New Jersey Temporary Disability Law (N.J.S.A. 43:21-25, et seq.). Payments which are excludable from taxable gross income include temporary disability benefit payments required to be made under the State Plan which is administered by the Bureau of State Plan Disability Benefits under the New Jersey Disability Law. Exclusion from taxable gross income also includes payments required to be made to employees under a company's private plan established pursuant to New Jersey law in lieu of the State Plan described in the preceding sentence and which has been approved by the Bureau of Private Plan Disability Benefits, Division of Unemployment Insurance and Disability Insurance.

(e) Where payment to employees under the health or accident insurance plan is largely discretionary with the employer, such as during the initial period (for example, first seven days), the exclusion from taxable gross income does not apply. Such payments to the employee are subject to tax as wages and salaries. In order for a wage loss payment made under an accident or health insurance plan to be excludable from taxable gross income, the payment to the employee must have a requisite certainty under an enforceable contractual obligation.

(f) Effective June 1, 1982, withholding of the gross income tax shall be required on all payments of wages and salaries made to an employee by an employer. The withholding of the tax is required even though such payments meet all the conditions for exclusion from taxable gross

income as made through an accident or health insurance plan for personal injuries or sickness under this section. The only exceptions for the withholding of tax shall be for the following:

1. Temporary disability benefit payments required to be made under the State Plan which is administered by the Bureau of State Plan Disability Benefits under the New Jersey Disability Law;
2. Temporary disability benefit payments required to be made to employees under a company's private plan established pursuant to New Jersey law in lieu of the State Plan described in (f)1 above and which has been approved by the Bureau of Private Plan Disability Benefits, Division of Unemployment Insurance and Disability Insurance; and
3. Payments made to employees for personal injuries or sickness under a health or accident insurance policy by a commercial insurance company.

(g) All taxpayers will be required to file with their annual New Jersey Gross Income Tax Return a claim form furnished by the director for the exclusion of any amounts received by them as an employee through an accident or health insurance plan for personal injuries or sickness which meet all the conditions for exclusion from taxable gross income under (f)1, 2 and 3 above.

1. Examples:

i. An employee of Company X is allowed 12 vacation days and 15 sick days for the year 1982. The employee uses 12 vacation days and 10 sick days in 1982 for which he receives his regular wage payment, regardless of the cause for his absence. The amounts received by the employee in 1982 for the 12 vacation days and 10 sick days are subject to tax as wage and salary income to the employee and the employer must also withhold gross income tax on such payments.

ii. Company Y has a self-insured disability plan for its employees who are absent from work because of accident or sickness. The plan is fully funded by the employer company and the employees make no contribution to the plan. Payment for the full amount of wages is made to disabled employees absent from work, on the eighth calendar day. Payment for the initial seven days to the covered employee is discretionary with the company employer under the plan. The amount received by the absent employee because of his disability is excludable from taxable gross income as health or accident insurance after the initial seven days of absence but is subject to withholding tax. Any amount received by the employee as payment for the seven initial days is subject to tax as wage and salary income to the employee and is also subject to withholding tax.

iii. Employee C receives a payment in 1982 from the New Jersey Disability Benefit Fund during an ab-

sence from work because of temporary disability resulting from illness. Both the employee and employer have contributed to the disability benefit fund. The total amount received by the employee from the New Jersey Disability Benefit Fund is excludable from taxable gross income as a payment for health or accident insurance and is not subject to withholding tax.

iv. Employee D is absent from work in 1982 because of illness and receives from the X Insurance Company the full amount of his wages during the period of his absence from work. The payment was made from a health or accident insurance policy to which only the employer has contributed. The amounts received by the employee are excludable from taxable gross income as health or accident insurance and are not subject to withholding tax.

R.1982 d.164, effective June 7, 1982.

See: 14 N.J.R. 271(a), 14 N.J.R. 581(a).

Recodified from N.J.A.C. 18:35-1.15 and amended by R.1998 d.195, effective April 20, 1998.

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

Former N.J.A.C. 18:35-2.3, Procedure for setoff, recodified as N.J.A.C. 18:35-10.3.

#### **18:35-2.4 One-time election to exclude up to \$125,000 of gain on sale of principal residence; rollovers**

(a) The rules concerning one-time election to exclude up to \$125,000 of gain on sale of principal residences and rollovers are as follows.

1. General rule: Capital gains one-time exclusion; where taxpayers 55 years or older sell a principal residence on or after January 1, 1979 which they have owned and used as principal residence for at least three years during the five year period ending on the date of the sale, they may make a one-time election to exclude up to \$125,000 of gain realized on the sale.

2. Prior election: The fact that a taxpayer age 65 or older made the prior election to exclude gain on a pre-January 1, 1979 sale of residence will not prevent him or her from electing the new \$125,000 exclusion.

3. Joint return: In the case of jointly owned property where a joint return is filed, if one spouse meets the age, holding, and use requirements for the exclusion, both spouses are treated as meeting such requirements.

4. Deceased spouse: Taxpayer over 55 years of age whose spouse is deceased will be treated as satisfying the holding and use requirements if the taxpayer was at least 55 years of age prior to the date of the sale and has not remarried, and the deceased spouse must have satisfied the holding and use requirements and must not have made a prior election to take the exclusion on another residence.

5. Coupling one-time exemption with residence rollover exclusion: This one-time election may be coupled with the residence rollover exclusion described below, for deferring all or part of the gain not excluded under the \$125,000 exclusion rule.

6. Residence rollover exclusion: Gains derived from the sale or exchange of principal residence where a new residence is purchased within two years after the sale of the prior residence are not includible in gross income if the purchase price of the new principal residence is equal to or greater than the adjusted sales price of the principal residence sold.

7. Multiple rollover provision—Applicable only to residence rollover-exclusion: If a taxpayer had excluded gain from the sale of a residence within 24 months prior to the sale of a subsequent principal residence, the tax free rollover of the second sale will be permitted only where the sale of the residence is in connection with relocation and employment at a new principal place of work, and the taxpayer satisfies both the geographic and length of employment requirements for the deductibility of moving expense for Federal purposes.

i. Example: On January 1, 1979, a taxpayer sold his personal residence in Englewood at a gain and purchased a more expensive residence in the same city on February 15, 1979. The gain derived from the sale of the first residence qualified for deferral under the law and the taxpayer was not required to report the gain for tax purposes. In August, 1979, the taxpayer's employer permanently transferred him to a new principal place of work in Cherry Hill which transfer qualified the taxpayer to deduct his moving expenses for Federal income tax purposes. On September 1, 1979, the taxpayer sold his Englewood residence at a gain and purchased a more expensive residence at the new job location in Cherry Hill. Ordinarily, a taxpayer cannot defer the gain derived from two personal residences if he has already elected to defer a gain during a two-year period. However, in this situation, the taxpayer qualified again to defer the gain derived from the sale of the second home which he purchased in Englewood by reason of the fact that his purchase of a new personal residence in Cherry Hill was necessitated in connection with relocation in employment at a new principal place of work and because geographic and Federal moving expense requirements were met.

ii. Where the multiple rollover provision applies, the basis of each new residence must be reduced by the amount of gain deferred on the preceding sale.

R.1979 d.475, effective December 5, 1979.

See: 11 N.J.R. 594(a), 12 N.J.R. 56(c).

Amended by R.1987 d.476, effective November 16, 1987.

See: 19 N.J.R. 1182(a), 19 N.J.R. 2201(c).

18-month changed to two-year.

Recodified from N.J.A.C. 18:35-1.13 by R.1998 d.195, effective April 20, 1998.

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

Former N.J.A.C. 18:35-2.4, Matching, recodified as N.J.A.C. 18:35-10.4.

SUBCHAPTER 3. (RESERVED)

SUBCHAPTER 4. CREDITS AGAINST TAX

**18:35-4.1 Computation of credit for taxes paid to other jurisdictions**

(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.

3. N.J.S.A. 54A:4-1(b) provides for a limitation on the credit for tax paid to another state or political subdivision thereof. The amount of the resident taxpayer credit for tax paid to another state or political subdivision thereof shall not exceed the percentage derived by dividing income subject to tax in the other jurisdiction by the taxpayer's entire New Jersey income times the tax otherwise due under the New Jersey Gross Income Tax Act.

4. For purposes of determining the percentage, as provided in paragraph 3 above, for limitation of the tax credit:

i. Income subject to tax by the other jurisdiction means those categories of income which are taxed by another jurisdiction before the allowance for personal

exemptions and standard and/or other itemized deductions and which are also subject to tax under the New Jersey Gross Income Tax Act.

ii. Entire New Jersey income means the categories of New Jersey gross income subject to tax before allowances for personal exemptions and deductions.

iii. Adjustment must be made:

(1) In the numerator, for taxpayers who claim credit for income in the numerator which has been only partially taxed by the other jurisdiction; and

(2) In the denominator, for taxpayers who claim credit for income in the numerator as income subject to tax in the other state or political subdivision thereof which has already been excluded from New Jersey income.

(3) For example, a taxpayer who includes in the numerator (see line 69, N.J. 1040 ±) pension and/or other retirement income which is subject to tax by the other jurisdiction but which is excluded from the denominator (line 17c of Form N.J. 1040) shall make an adjustment in the denominator to add back such pension and/or other retirement income to reflect the entire New Jersey income.

5. Taxes paid by a resident taxpayer under the City of Philadelphia Wage Tax and New Profits Tax are eligible for the resident tax credit.

i. A W-2 Form must be attached to the New Jersey Gross Income Tax Resident Return (Form N.J. 1040) to indicate the amount subject to the City of Philadelphia Wage Tax and the amount of tax withheld.

ii. A copy of the City of Philadelphia Net Profits Tax Return must be attached to the New Jersey Gross Income Tax Resident Return (Form N.J. 1040) to indicate the amount of the City of Philadelphia Net Profits Tax paid.

6. The following examples will illustrate how the maximum allowable resident credit for tax paid to another jurisdiction shall be determined:

i. Example 1: Taxpayer income is as follows:

NEW YORK		
Wages		\$15,000
Capital Gains		
Long Term	\$20,000	
Deduction	<u>12,000</u>	8,000
Total New York Income		\$23,000
NEW JERSEY		
Wages		\$15,000
Dividends		3,000
Capital Gains		<u>20,000</u>
		\$38,000
Less: Exemptions		<u>2,000</u>
		\$36,000
New Jersey Tax		\$ 800

Line 67 New York income subject to tax (not \$35,000): \$23,000  
 Line 68 Entire New Jersey Income: \$38,000  
 Line 69  $\$23,000 \div \$38,000 = 60.53\% \times \$800 = \$484.24$   
 Maximum Allowable Credit

ii. Example 2: Taxpayer income is as follows:

<b>NEW YORK</b>	
Rental Income	\$13,000
N.Y.C. Pension	4,000
Total New York Income	\$17,000
<b>NEW JERSEY</b>	
Wages	\$ 2,000
Rental Income	21,000
Pension (NYC)	\$4,000
N.J. Exclusion	4,000
	<u>-0-</u>
	\$23,000
Retirement Income Exclusion	6,000
	<u>17,000</u>
Less: Exemptions	2,000
	<u>\$15,000</u>
Tax	\$ 300
Line 67 New York Income Subject to Tax:	\$17,000
New Jersey Gross Income (Line 17c):	\$17,000
Plus Exclusions:	
Pension Income	4,000
Retirement Income	6,000
Line 68 Entire New Jersey Income:	\$27,000
Line 69 $\$17,000 \div \$27,000 = 62.96\% \times \$300 = \$188.88$	
Maximum Allowable Credit	

iii. Example 3:

A resident, New Jersey taxpayer has two businesses ("A"—N.Y., "B"—N.J.) and the net profits (or losses) from such are both reportable at line 39 of the return. The net income of business "A" is \$50,000 and is entirely attributable to New York. The net loss of business "B" is \$40,000 and is entirely attributable to New Jersey.

The taxpayer has paid a tax on \$50,000 to New York but only on \$10,000 to New Jersey (\$40,000 loss netted against the \$50,000 net income at line 39).

The taxpayer may include as income subject to tax by the other jurisdiction on line 67 (Form N.J. 1040) only business income subject to tax in New Jersey and therefore, must deduct from the \$50,000 New York business income the \$40,000 not subject to tax as business income in New Jersey.

In no event may a taxpayer claim a credit for income or wage taxes paid to other jurisdiction(s) unless the income so claimed is also included in entire New Jersey income at line 68 of the return.

Taxpayer Income is as follows:

<b>NEW YORK</b>	
Business Income	\$50,000
<b>NEW JERSEY</b>	
Dividend Income	\$ 5,000
Interest	2,000

Capital Gain Income		3,000
Business Income	\$50,000	
Business Loss	<u>(40,000)</u>	10,000
		\$20,000
Less: Exemptions		<u>2,000</u>
		\$18,000
Tax		\$ 360
Line 67 New York Income	\$50,000	
Less: Amount Not Subject to tax in New Jersey		40,000
Income Subject to Tax in New York which is also Subject to Tax in New Jersey:		\$10,000
Line 68 Entire New Jersey Income:		\$20,000
Line 69 $\$10,000 \div \$20,000 = 50\%$ of \$360 = \$180		
Maximum Allowable Credit		

iv. Example 4: Taxpayer income is as follows:

<b>NEW YORK</b>	
Wages	\$15,000
Less Sick Pay qualifying in New York only	<u>5,000</u>
Total New York Income	\$10,000
<b>NEW JERSEY</b>	
Wages	\$15,000
Dividends	3,000
Capital Gains	<u>2,000</u>
	\$20,000
Less: Exemptions	<u>2,000</u>
	\$18,000
	\$360

Tax  
 Line 67 New York Income Subject to Tax (not \$15,000): \$10,000  
 Line 68 Entire New Jersey Income: \$20,000  
 Line 69  $\$10,000 \div \$20,000 = 50\%$  of \$360 = \$180  
 Maximum Allowable Credit

7. The following is the worksheet for credit for taxes paid to another jurisdiction:

**WORKSHEET FOR CREDIT TO OTHER JURISDICTIONS:**

(Use this worksheet to determine "entire New Jersey income" at line 68 of the return if a credit to other jurisdictions is being claimed.)

List the following:

- a. Gross Income (Line 17c)
- b. Pension Exclusion (Line 45(b))  
(see instruction below)
- c. Retirement Income/Special Exclusion  
(Line 17b) (see instruction below)

d. Entire New Jersey Income (income subject to tax by another jurisdiction which is also subject to tax under the N.J. Gross Income Tax Act). (Add lines a, b and c) (to be entered here and at line 68.)

**INSTRUCTIONS:**

The amount of pension exclusion claimed at line 40b and the amount of retirement income exclusion claimed at line 17b are includible in determining "entire New Jersey income" and are, therefore, to be included in the amount reported by you at line 67.

**EXAMPLE:**

A resident New Jersey taxpayer has two businesses and the net profits (or losses) from such are both reportable at line 34 of the return. The net income of business "A" is \$50,000 and is entirely attributable to New York. The net loss of business "B" is \$40,000 and is entirely attributable to New Jersey.

The taxpayer has paid a tax on \$50,000 to New York but only on \$10,000 to New Jersey (\$40,000 net loss netted from \$50,000 net income at line 39).

The taxpayer may include as income subject to tax by the other jurisdiction on line 67 (Form N.J. 1040) only business income subject to tax in New Jersey and therefore must deduct from the \$50,000 New York business income the \$40,000 not subject to tax as business income in New Jersey.

In no event may a taxpayer claim a credit for income or wage taxes paid to other jurisdiction(s) unless the income so claimed is also included in entire New Jersey income at line 68 of the return.

Taxpayer should retain this worksheet for substantiation of the credit claimed.

8. Instruction for line 67: Do not include on this line any income which has been excluded or deducted from the taxable gross income of other jurisdiction(s) or which has not been taxed by other jurisdiction(s). Example: If a portion of long-term capital gains are excluded from such taxable income, such excluded portions may not be included in line 67.

9. A New Jersey resident taxpayer in determining the resident credit allowed against the tax due under this Act for the amount of any income tax or wage tax imposed for the taxable year by another state or political subdivision of such state or by the District of Columbia, shall not combine in the numerator (line 64, N.J. 1040) the same income subject to tax by the jurisdiction and/or political subdivision. The amount of income or wage tax during the tax year shown on line 70, N.J. 1040 for the taxpayer paying both a tax to another state and political subdivision of such state would be the total amount of state income tax and income tax or wage tax paid to the other state and

political subdivision of such state where the same amount of income is subject to tax in both the other state and political subdivision of such state. Where the income subject to tax in both the other state and political subdivision of such state are not equal, a separate calculation shall be made of the excess income to arrive at the limitation of the credit for the income tax or wage tax paid to the other state and political subdivision of such state.

For example:

**STEP NO. 1**

Line 67	Income subject to tax in both the other state and its political subdivisions	_____
Line 68	New Jersey Gross Income (Line 17c, NJ 1040)	_____
Line 69	Line 67 _____ × New Jersey Tax (Line 25, N.J. 1040)	_____
Line 68	= Maximum allowable credit	_____
Line 70	Tax paid on amount in Line 67 to each jurisdiction	_____
	State Political Subdivisions	_____
Line 71	Lesser of Line 69 or 70	_____

**STEP NO. 2**

Line 67	Amount subject to tax in one jurisdiction and not in the other(s)	_____
Line 68	New Jersey Total Gross Income (Line 17c, NJ 1040)	_____
Line 69	Line 67 _____ × New Jersey Tax (Line 25, NJ 1040)	_____
Line 68	= Maximum allowable credit	_____
Line 70	Tax paid to the jurisdiction on amount appearing on Line 67	_____
Line 71	Lesser of Line 69 or 70	_____

**STEP NO. 3**

Step No. 1 Line 71 plus Step No. 2 Line 71 \_\_\_\_\_

The following examples illustrate the above outlined procedures:

**Example 1**

**Taxpayer A**

(1)	Total Gross Income (Line 17c, NJ 1040)	\$100,000
	Income subject to tax in other jurisdictions:	
(2)	New York State: \$40,000	
(3)	New York City: \$50,000	
(4)	Identical income subject to tax in both jurisdictions: \$40,000	
(5)	New York State Tax: \$2,700	
(6)	New York City Tax: \$225	
(7)	New Jersey Tax (Line 25, NJ 1040)	\$2,690

**Calculation of Credit**

**STEP NO. 1**

Line 67	(4) above	\$ 40,000
Line 68	(1) above	100,000
Line 69	\$40,000 _____ × \$2,690	1,076
	100,000	
Line 70	New York State (based on \$40,000 as indicated on line (4) above)	\$2,700

	New York City 4/5 × \$225 (based on \$40,000 as indicated on line (4) above)	180	2,880
Line 71			<u>\$1,076</u>
STEP NO. 2			
Line 67	(3)-(2)		\$ 10,000
Line 68			100,000
Line 69	\$10,000		
	<u>100,000</u> × \$2,690		269
Line 70	/15 × \$225		45
Line 71			<u>\$ 45</u>
STEP NO. 3			
Line 71	Step No. 1	\$1,076	
	Step No. 2	<u>45</u>	
Line 26	Total New Jersey Tax Credit Allowed		<u>\$1,121</u>

Example 2

Taxpayer B

(1)	Total Gross Income (Line 17c, NJ 1040)	\$100,000
	Income subject to tax in other jurisdictions:	
(2)	New York State: \$50,000	
(3)	New York City: \$40,000	
(4)	Identical income subject to tax in both jurisdictions: \$40,000	
	Tax paid to other jurisdictions:	
(5)	New York State Tax: \$4,200	
(6)	New York City Tax: \$180	
(7)	New Jersey Tax (Line 25, NJ 1040)	
	\$2,690	

Calculation of Credit

STEP NO. 1

Line 67	(4) above	\$ 40,000
Line 68	(1) above	100,000
Line 69	\$40,000	
	<u>100,000</u> × \$2,690	1,076
Line 70	New York State (based on \$40,000 as indicated on line (4) above)	\$2,700
	New York City (based on \$40,000 as indicated on line (4) above)	180
Line 71		<u>\$1,076</u>

STEP NO. 2

Line 67	(2)-(3)	\$ 10,000
Line 68		100,000
Line 69	\$10,000	
	<u>100,000</u> × \$2,690	269
Line 70	(5) Above Less: Step No. 1, Line 70	\$4,200
	<u>2,700</u>	1,500
Line 71		<u>\$ 269</u>

STEP NO. 3

Line 71	Step No. 1	\$1,076
	Step No. 2	<u>269</u>
Line 26	Total New Jersey Tax Credit Allowed	
	<u>\$1,345</u>	

Example 3

Taxpayer C

	Income the same in both state and city	
Line 67		\$ 40,000
Line 68		100,000
Line 69	\$40,000	
	<u>100,000</u> × \$2,690	1,076

Line 70	New York State	\$2,700	
	New York City	<u>180</u>	2,880
Line 71	(Line 26, NJ 1040)		
	Tax Credit		<u>\$ 1,076</u>

i. When claiming a credit for the taxes paid to another jurisdiction and/or political subdivision, the taxpayer shall file with the New Jersey tax return, a signed copy of the tax return filed with the other jurisdiction and/or political subdivision showing the amount of the tax paid. A W-2 form or its equivalent which indicates the withholding of income tax in another jurisdiction and/or political subdivision is considered prima facie evidence of such amount of tax paid where the taxing jurisdiction and/or political subdivision imposing an income tax or wage tax does not require the filing of a return by the taxpayer claiming a credit.

ii. Where a taxpayer claims credit for taxes paid to more than one state on income earned in that state, a separate computation for the maximum allowable credit shall be made for each such state.

iii. Example 1: Taxpayer Income is as follows:

Husband and Wife File Jointly—2 Exemptions

NEW YORK		
Wages		\$20,000
Standard Deduction		<u>2,400</u>
		\$17,600
Exemption		
2 × 66.6% (\$700)		<u>933</u>
		\$16,667
New York State Tax		\$ 1,027
New York City Tax		<u>81</u>
Total Tax		\$ 1,108
NEW JERSEY		
Wages		\$20,000
Interest		1,000
Dividends		2,000
Other Income		<u>7,000</u>
		\$30,000
Exemptions		<u>2,000</u>
		\$28,000
New Jersey Tax		\$ 600
Tax Credit		
Line 67 Income Subject to Tax by Other Jurisdiction		\$20,000
Line 68 Income Subject to Tax by New Jersey		\$30,000
Line 69 Maximum Allowable Credit		
\$20,000 ÷ \$30,000 × \$600 (N.J. Tax) =		\$400
Line 70 Income or Wage Tax Paid to Other Jurisdictions		\$1,108
Line 71 New Jersey Tax Credit Allowed		\$400

iv. Example 2: Taxpayer Income is as follows: Husband and Wife File Jointly—2 Exemptions

OTHER STATE		
Wages		\$20,000
Assume		
State Tax		250
Local Wage Tax		<u>75</u>
Total Tax		\$ 325
Wages		\$20,000
Interest		1,000

Dividends	2,000
Other Income	7,000
	<u>30,000</u>
Exemptions	2,000
	<u>28,000</u>
New Jersey Tax	\$ 600
Tax Credit	
Line 67 Income Subject to Tax by Other Jurisdiction	20,000
Line 68 Income Subject to Tax by New Jersey	30,000
Line 69 Maximum Allowable Credit	
$\$20,000 \div \$30,000 \times \$600$ (N.J.Tax) =	\$400
Line 70 Income or Wage Tax Paid to Other Jurisdictions	\$325
Line 71 New Jersey Tax Credit Allowed	\$325

$\$15,000 \div \$28,000 \times \$500$ (N.J.Tax) =	\$294.65
Line 70—Income or Wage Tax Paid to Other Jurisdiction	\$600.00
Line 71—New Jersey Tax Credit Allowed	\$294.65
Total New Jersey Tax Credit Allowed	
State A—\$150.00	
State B—\$294.65	
	\$444.65

R.1979 d.433, effective October 26, 1979.  
 See: 11 N.J.R. 525(b), 11 N.J.R. 650(b).  
 As amended, R.1983 d.618, effective January 17, 1984.  
 See: 15 N.J.R. 1566(a), 16 N.J.R. 149(a).  
 Section substantially amended.  
 Recodified from N.J.A.C. 18:35-1.12 by R.1998 d.195, effective April 20, 1998.  
 See: 30 N.J.R. 612(a), 30 N.J.R. 1428(a).

v. Example 3: Taxpayer Income is as follows:

Husband and Wife File Jointly—2 Exemptions

OTHER JURISDICTION	
Wages	\$20,000
Local Wage Tax	\$ 800
NEW JERSEY	
Wages	\$20,000
Interest	2,000
Dividends	2,000
	<u>24,000</u>
Exemptions	2,000
	<u>22,000</u>
Tax	\$ 450
Tax Credit	
Line 67 Income Subject to Tax by Other Jurisdiction	20,000
Line 68 Income Subject to Tax by New Jersey	24,000
Line 69 Maximum Allowable Credit	
$\$20,000 \div \$24,000 \times \$450$ (N.J.Tax) =	\$375
Line 70 Wage Tax Paid to Other Jurisdiction	\$800
Line 71 New Jersey Credit Allowed	\$375

vi. Example 4: Taxpayer Income is as follows:

Husband and Wife File Jointly—2 Exemptions

OTHER JURISDICTIONS	
State A—Wages	\$10,000
State B—Wages	\$15,000
Assume	
State A—Tax	\$ 150
State B—Tax	\$ 600
NEW JERSEY	
Wages	\$25,000
Interest	1,000
Dividends	2,000
	<u>28,000</u>
Exemptions	2,000
	<u>26,000</u>
New Jersey Tax	\$ 550
Tax Credit	
State A	
Line 67—Income Subject to Tax by Other Jurisdiction	\$10,000
Line 68—Income Subject to Tax by New Jersey	\$28,000
Line 69—Maximum Allowable Credit	
$\$10,000 \div \$28,000 \times \$550$ (N.J.Tax) =	\$196.42
Line 70—Income or Wage Tax Paid to Other Jurisdiction	\$150.00
Line 71—New Jersey Tax Credit Allowed	\$150.00
State B	
Line 67—Income Subject to Tax by Other Jurisdiction	\$15,000
Line 68—Income Subject to Tax by New Jersey	\$28,000
Line 69—Maximum Allowable Credit	

Case Notes

Rule upheld against equal protection challenge; credit for New York state personal income tax found to have exhausted New Jersey tax on taxpayer's New York income, notwithstanding that the taxpayer was also subject to New York City earnings tax. *Jenkins v. Taxation Div. Director*, 4 N.J.Tax 127, 184 N.J.Super 402, 446 A.2d 217 (Tax Ct.1982).

Rule interpreting "resident credit" as requiring exclusion for income which is excluded or deducted from taxable gross income by another jurisdiction held valid; application of 1979 rule to 1976 tax return held proper. *Sorensen v. Director, Div. of Taxation*, 2 N.J.Tax 470, 184 N.J.Super 393, 446 A.2d 213 (Tax Ct.1981).

Net gain from partnership activities taxed by foreign jurisdictions but completely offset by allowable partnership loss deductions in state; not included in numerator of tax credit fraction. *Kanarek v. Director, Div. of Taxation*, 14 N.J.Tax 589 (1995).

In calculating credit fraction numerator, gross income subject to tax in other jurisdiction would be reduced by taxpayers' capital loss, which was deductible in New Jersey but not in other state but not by additional lesser amount of taxpayers' rental loss, which was deductible in other state but not in New Jersey. *Allen v. Director Div. of Taxation*, 14 N.J.Tax 385 (1994).

Instructions on computing resident credit for income tax purposes were not erroneous. *Widder v. Director, Div. of Taxation*, 14 N.J.Tax 349 (1994).

Income not actually taxed by another state, but which was used by that state in calculating applicable tax rate for income from that state, would not be included in numerator of resident credit fraction. *Chin v. Director, Div. of Taxation*, 14 N.J.Tax 304 (1994).

Credit for foreign income tax; loss disallowed by New Jersey tax statute. *Berlin v. New Jersey Div. of Taxation*, 13 N.J.Tax 405 (1993).

Resident credit was properly calculated separately for each New York City and state tax. *Willett v. Director, Div. of Taxation*, 10 N.J.Tax 402 (1989).

Only income subject to tax by another state also taxed by New Jersey could be used to determine maximum gross income tax credit. *Stiber v. Director, Div. of Taxation*, 9 N.J.Tax 623 (1988).

Foreign city income tax that did not exceed minimum credit available could be credited against New Jersey income tax. *Stiber v. Director, Div. of Taxation*, 9 N.J.Tax 623 (1988).

Since alimony paid by taxpayers residing in New Jersey but working in New York was a deduction in New York, Director held to have properly excluded alimony payments from the numerator of the fraction used to calculate the credit for tax paid to New York. *Nielson v. Taxation Div. Director*, 4 N.J.Tax 438 (Tax Ct.1982).

18:35-4.2 Credit for excess contributions

(a) Credit for excess amounts deducted and withheld as worker contributions for unemployment, disability insurance, Workforce Development Partnership Fund and Health Care Subsidy Fund shall be treated as follows:

1. Employers issuing a W-2 form to employees shall include on it:

- i. The amount of New Jersey unemployment insurance contributions withheld;
- ii. The amount withheld for New Jersey disability benefits fund contributions or for a private plan;
- iii. The combined total amount withheld for Workforce Development Partnership Fund and Health Care Subsidy Fund contributions or, in the alternative, the separate amounts contributed to these funds;
- iv. The New Jersey unemployment number; and
- v. The New Jersey private plan number, if any.

(b) The latter two numbers referred to in (a)iv and v above are assigned by the New Jersey Division of Unemployment and Disability Insurance in the Department of Labor.

(c) An individual claiming a credit against gross income tax for overpayment of unemployment, disability insurance, Workforce Development Partnership Fund or Health Care Subsidy Fund contributions shall claim such credit by including with his New Jersey 1040 or New Jersey 1040-NR a completed New Jersey Form 2450. A claim not received within two years after the end of the calendar year in which the contributions were deducted is void. Such claims are not applicable to withholdings made during calendar years prior to 1983.

**Example 1:** During 1983, A, who is divorced, worked for two employers in New Jersey. The first withheld the maximum of \$44.00 for unemployment insurance contributions and \$44.00 disability benefits fund contributions from A's salary, as required by law. The second employer withheld \$30.00 from A's wages as contributions to each fund for the total of \$60.00. A files his 1983 Gross Income Tax Return and pays the tax on February 14, 1984 but fails to make claim for the \$60.00 excess contributions withheld during 1983 or qualifying alimony payments made in that year.

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)1iii; redesignated old (a)1iii and iv to (a)1iv 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).

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## SUBCHAPTER 5. NEW JERSEY SOURCE INCOME OF NONRESIDENTS

### 18:35-5.1 Compensation received by nonresident professional athletes

(a) The New Jersey source income of a nonresident individual who is a member of a professional athletic team includes that portion of such individual's total compensation for services rendered as a member of a professional athletic

team during the taxable year which the number of duty days spent within New Jersey rendering services for the team in any manner during the taxable year bears to the total number of duty days spent both within and without New Jersey during the taxable year.

(b) For purposes of this section:

1. "Professional athletic team" includes, but is not limited to, any professional baseball, basketball, football, soccer or hockey team.

2. "Member of a professional athletic team" includes those employees who are active players, players on the disabled list and any other persons required to travel and who do travel with and perform services on behalf of a professional athletic team on a regular basis. This includes, but is not limited to, coaches, managers and trainers.

3. "Duty days" means, except as provided in (b)3iii and iv below, all days including the taxable year from the beginning of the professional athletic team's official pre-season training period through the last game in which the team competes or is scheduled to compete.

Recodified from N.J.A.C. 18:35-1.10 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 (h), changed N.J.A.C. reference.

#### 18:35-7.4 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).

Recodified from N.J.A.C. 18:35-1.1 by R.1998 d.195, effective April 20, 1998.

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

#### 18:35-7.5 Gambling winnings subject to withholding

(a) Every payor of New Jersey gambling winnings which are subject to withholding, as defined in (d) below, shall deduct and withhold New Jersey gross income tax thereon in an amount equal to three percent of payments made to both New Jersey residents and nonresidents as defined in N.J.S.A. 54A:1-2(m) and (n). Such withholding shall be required in all instances wherein the payor of such winnings is required to withhold for Federal income tax purposes under subsection (q) of section 3402 of the Federal Internal Revenue Code of 1986 (26 U.S.C. § 3402), as amended.

(b) The tax imposed under N.J.S.A. 54A:7-1(c) and this section shall not apply:

1. With respect to the payment of winnings from the New Jersey Lottery; and
2. With respect to a payment of winnings from a slot machine, or a keno or bingo game.

(c) Any person receiving a payment of New Jersey gambling winnings subject to withholding must furnish the payor a statement made under the penalties of perjury containing:

1. The name, address, and taxpayer identification (social security) number of the winner accompanied by a declaration that no other person is entitled to any portion of such payment; or

2. The name, address, and taxpayer identification (social security) number of the recipient and of every person entitled to any portion of such payment.

3. The requirement set forth in (c)1 and 2 above may be satisfied by providing the payor with a copy of Federal Form W-2G or 5754, whichever is applicable.

(d) New Jersey gambling winnings subject to withholding means any payment from:

1. A wager placed in a sweepstakes, wagering pool or lottery, other than the New Jersey Lottery, but only if the proceeds from the wager exceed \$1,000; or

2. Any other wagering transaction, including but not limited to, a wagering transaction in a parimutuel pool with respect to horse races, but only if the proceeds from the wager:
  - i. Exceed \$1,000; and
  - ii. Are at least 300 times as large as the amount of the wager.

- i. Exceed \$1,000; and

- ii. Are at least 300 times as large as the amount of the wager.

3. If proceeds from a wager as set forth in (d)1 and 2 above qualify as winnings subject to withholding, then the total proceeds from the wager, and not merely amounts in excess of \$1,000, are subject to withholding.

(e) Proceeds from a wager is the amount paid with respect to a wager, less the amount of the wager. Amounts paid with respect to identical wagers are treated as paid with respect to a single wager for purposes of calculating the amount of proceeds from a wager.

1. In determining the amount paid with respect to a wager, proceeds which are not money shall be taken into account at the fair market value.

2. Periodic payments, including installment payments or payments which are to be made periodically for the life of a person, are aggregated for purposes of determining the proceeds from a wager. The aggregate amount of period payments to be made for a person's life shall be based on the person's life expectancy. For purposes of determining the amount subject to withholding, the first periodic payment shall be reduced by the amount of the wager.

(f) Payments to any person of winnings subject to withholding under this section shall be treated as if they are wages paid by an employer to an employee under the provisions of N.J.S.A. 54A:7-2 through N.J.S.A. 54A:7-7; provided, however, that such payments shall be considered gambling winnings for all other purposes under the Gross Income Tax Act (N.J.S.A. 54A:1-1 et seq.).

New Rule, R.1988 d.407, effective September 6, 1988.  
 See: 19 N.J.R. 2255(a), 20 N.J.R. 2310(c).  
 Recodified from N.J.A.C. 18:35-1.20 by R.1998 d.195, effective April 20, 1998.  
 See: 30 N.J.R. 612(a), 30 N.J.R. 1428(a).

### 18:35-7.6 Filing of withholding returns by professional athletic teams

Any "professional athletic team" (as defined by N.J.A.C. 18:35-5.1(b)1) which pays compensation to a resident or nonresident individual for services rendered to the team within New Jersey shall be deemed to be an "employer" and shall be required to withhold New Jersey gross income tax return from that portion of the compensation attributable to "duty days" spent in New Jersey, as defined in N.J.A.C. 18:35-5.1(b)3.

Recodified from N.J.A.C. 18:35-1.22(c) and amended by R.1998 d.195, effective April 20, 1998.  
 See: 30 N.J.R. 612(a), 30 N.J.R. 1428(a).  
 Changed N.J.A.C. references.

### 18:35-7.7 Commuter transportation benefits reporting by employer

(a) Pursuant to N.J.S.A. 54A:7-2, an employer shall provide an employee with a written statement as prescribed by the Director in (b) below showing the cost of commuter transportation benefits paid by the employer to the employee. Should said benefits exceed the amount of \$720.00 for the taxable year beginning on or after January 1, 1993, but before January 1, 1994, then the amount received by the employee in excess of \$720.00 shall be includable in gross income of the employee. For taxable years following thereafter, the Director shall adjust the limit, rounded down to the nearest \$5.00, in proportion to the change in the average consumer price index for all urban consumers in the New York and northeastern New Jersey and the Philadelphia areas, as reported by the United States Department of Labor, from calendar year 1993 to the calendar year ending before the taxable year. Notice of the adjusted limit shall be published in the New Jersey Register. Amounts received by the employee not exceeding \$720.00 shall not be included in the employee's gross income.

(b) The written statement required to be provided by the employer to the employee as set forth in (a) above may be set forth on a W-2 form or other written information statement showing the amount of such benefits.

New Rule, R.1995 d.19, effective January 3, 1995.  
 See: 26 N.J.R. 4173(a), 27 N.J.R. 143(a).  
 Public Notice: Commuter transportation benefit limit for 1995.  
 See: 27 N.J.R. 4737(a).  
 Public Notice: Commuter transportation benefit limit for 1995.  
 See: 28 N.J.R. 2639(a).  
 Public Notice: Commuter transportation benefit limit for 1996.  
 See: 28 N.J.R. 5510(a).  
 Public Notice: Commuter transportation benefit limit for 1996.  
 See: 29 N.J.R. 813(c).  
 Recodified from N.J.A.C. 18:35-1.28 by R.1998 d.195, effective April 20, 1998.  
 See: 30 N.J.R. 612(a), 30 N.J.R. 1428(a).  
 Public Notice: Commuter transportation benefit limit for 1998.

See: 30 N.J.R. 2533(a).  
 Public Notice: Commuter transportation benefit limit for 1999.  
 See: 31 N.J.R. 1112(b).  
 Public Notice: Commuter transportation benefit limit for 2000.  
 See: 32 N.J.R. 1088(a).  
 Public Notice: Commuter transportation benefit limit for 2001.  
 See: 33 N.J.R. 903(b).  
 Public Notice: Commuter transportation benefit limit for 2002.  
 See: 34 N.J.R. 1058(a).  
 Public Notice: Commuter transportation benefit limit for 2002. Corrected inflation adjustment.  
 See: 34 N.J.R. 1749(b).  
 Public Notice: Commuter transportation benefit limit for 2003.  
 See: 35 N.J.R. 1963(b).

### 18:35-7.8 Information of employer withholding from new employees

(a) The New Jersey Economic Development Authority shall submit data to the Director no later than April 1 of each year, for the preceding grant year, setting forth information regarding businesses applying for a grant under either the Business Employment Incentive Program Act (P.L. 1996, c.26) or the Business Relocation Assistance Act (P.L. 1996, c.25) (both referred to as "Act"). This information shall set forth the following relative to said business.

1. A list of the names, job titles and job locations of existing employees of said business not subject to a grant under the Act;
2. A list of the names and date hired and/or the date each new employee began employment at the project of said business in an eligible position for grant purposes under the Act, their base salary, overtime and bonuses paid, and the amount of New Jersey gross income tax withheld from each new employee and their city and state of residence;
3. The aggregate amount of payroll and withholdings for all employees in New Jersey;
4. The percentage and term of any grant pursuant to the Business Employment Incentive Program Agreement;
5. The amount of the grant to be disbursed to the business pursuant to the Business Relocation Assistance Act requiring the Treasurer's certification and the percentage upon which the grant is based;
6. The percentage and term of the grant to be disbursed to the business pursuant to the Business Employment Incentive Program Agreement requiring the Treasurer's certification;
7. A statement as to whether the applicant business has followed the criteria as set forth in guidelines promulgated by Economic Development Authority under the Act; and
8. A list of eligible positions that have been filled by persons who are rehired from a bona fide layoff or transferred from another company.

(b) The Director, upon receipt of the information referred to in (a) above, shall send to each business awarded a grant under the Act, a Declaration of Annual Withholding Information for Purposes of the Business Employment In-

centive Program, Form NJ-9000, to be completed and returned not later than May 7 to New Jersey Division of Taxation c/o EDA, PO Box 990, Trenton, NJ 08625-0990.

(c) Form NJ-9000 shall consist of a certification setting forth:

1. The number of new employees, as referred to in (a)2 above, together with their city/state residence, base salary, overtime and bonuses paid to them, withholding tax paid for each new employee during the preceding grant year and date hired or transferred. Each business shall also submit a copy of each Federal W-2 form for all said new employees;
2. The aggregate amount of payroll and withholdings for all employees in New Jersey; and
3. The amount and type of each grant, other than a grant under the Act, that the applicant business received by operation of State law during the preceding grant year.

(d) Each business shall annually submit to the Division of Taxation a Release Authorization authorizing the Division of Taxation to review the businesses tax history to determine if there are any tax delinquencies.

(e) Upon receipt of Form NJ-9000 from the business, the Director shall certify to the Treasurer, who in turn will certify to the New Jersey Economic Development Authority, the aggregate amount, as set forth on Form NJ-9000, of the withholdings received in that year from the business for new employees in eligible positions under the Act and whether same equals or exceeds the amount of the proposed grant to be given to said business under the Act.

(f) The Director shall also verify to the New Jersey Economic Development Authority on an annual basis any outstanding tax delinquencies for each business awarded a grant under the Act.

(g) The issuance of the certifications by the Division as set forth in (d) above is conditional upon the receipt by the Director of proper information as set forth on Form NJ-9000.

Recodified from N.J.A.C. 18:35-3.1 by R.1998 d.195, effective April 20, 1998.

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

Administrative change.

See: 34 N.J.R. 1425(b).

**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**

(a) In determining whether to recommend the approval or disapproval of a business to receive a grant under both the Business Employment Incentive Program Act and the Business Relocation Assistance Act, the Treasurer shall consider the following criteria:

1. The number of eligible positions created for new employees and the expected duration of those positions;

2. The total number of existing employees of the business;

3. The type of contribution the business can make to the long term growth of the State's economy;

4. The total dollar investment the business is contributing to the project;

5. The type of industry that the business is involved in;

6. The location of the project;

7. The type of jobs to be created and the associated wages; and

8. Such other factors as are presented by a specific applicant.

(b) In determining whether to recommend the approval or disapproval of a business receiving a grant under either the Business Employment Incentive Program Act or the Business Relocation Assistance Act and any other grant under operation of State law, which, when combined, exceeds 80 percent of its withholdings, the Treasurer shall consider the same criteria set forth in (a) above.

Recodified from N.J.A.C. 18:35-3.2 by R.1998 d.195, effective April 20, 1998.

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

**SUBCHAPTER 8. INFORMATION RETURNS**

**18:35-8.1 Information furnished at source; 1977 and subsequent returns**

(a) Under N.J.S.A. 54A:1-1 et seq., information returns which shall include the amounts paid to or credited to the accounts of all recipients for any calendar year beginning with January 1, 1977, are required to be provided to the Director, New Jersey Division of Taxation, by:

1. Payers of interest and dividends, including banks, savings and loan associations, building and loan associations, and savings banks; and

2. All payers including those who are required to file Federal Internal Revenue Service form 1099 or any of the form 1099 designations, which shall include lessees or mortgagors of real or personal property, fiduciaries, employers, and all officers and employees of this State, or of any municipal corporation or political subdivision of this State, having the control, receipt, custody, disposal or payment of interest, rents, salaries, wages, premiums, annuities, compensations, remunerations, emoluments or other fixed or determinable gains, profits or income, except interest coupons payable to bearer.

(b) Such information returns must be filed on or before February 15 following the close of each calendar year, with the Division of Taxation, PO Box 248, Trenton, New Jersey

08646-0248, where the amount paid or credited is \$1,000 or more.

(c) The requirements of (b) above shall be satisfied by providing the Director with any of the following, with preference in the order listed below:

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.

(d) Beginning with real estate transactions occurring after December 31, 1995, each person required to report the proceeds from real estate transactions to the Internal Revenue Service on Federal Form 1099-S (or any other form which the Internal Revenue Service may designate) pursuant to Section 6045(e) of the Federal Internal Revenue Code is required to submit all such reports to the Division of Taxation when the real estate being sold or exchanged is partially or entirely located in New Jersey.

1. All information returns required by this subsection must be filed on or before February 15 following the close of each calendar year, beginning with February 15, 1997. Information returns attributable to real estate transactions must be sent to: Division of Taxation, PO Box 187, Trenton, New Jersey 08646-0187, where the amount paid or credited is \$1,000 or more.
2. If any person required to file information returns under this subsection is also required to submit information returns pursuant to (b) above, such person shall send the information returns attributable to real estate transactions to the address specified in (d)1 above, and shall send all other information returns to the address specified in (b) above.

(e) The requirements of (d) above shall be satisfied by providing the Director with any of the following, with preference in the order listed below:

1. A copy of the magnetic tape provided to the Internal Revenue Service (with the same specifications) in lieu of forms 1099-S for the full calendar year, edited to delete all listings of real estate transactions with gross proceeds of less than \$1,000;

2. A copy of the tape provided to the Internal Revenue Service (as above) without deleting real estate transactions with gross proceeds of less than \$1,000;

3. Copies of all forms 1099-S submitted to the Internal Revenue Service for the full calendar year for real estate transactions with gross proceeds of \$1,000 or more (either an additional carbon or photocopy of the form 1099-S); or

4. Copies of all forms 1099-S 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).

Amended by R.1996 d.550, effective December 2, 1996.

See: 28 N.J.R. 2517(a), 28 N.J.R. 5079(b).

Recodified from N.J.A.C. 18:35-1.8 and amended by R.1998 d.195, effective April 20, 1998.

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

## SUBCHAPTER 9. INTEREST AND PENALTIES

### 18:35-9.1 Negligence and fraud penalties

(a) If any part of a deficiency is due to the taxpayer's negligence or an intentional disregard of any provision of the Gross Income Tax Act (N.J.S.A. 54A:1-1 et seq.) or the rules applicable thereto, there shall be added to the tax, penalties and interest as provided for in State Tax Uniform Procedure Law plus an amount equal to 10 percent of the deficiency, provided however that there was no intent to defraud.

(b) If a deficiency is assessed against a taxpayer and it is determined that any part of such assessment is due to civil fraud, there shall be added to the tax an amount equal to 50 percent of the assessment. This addition to the tax shall be in lieu of any other additions to the tax imposed for late filing and nonpayment of special assessment as provided for in N.J.S.A. 54:49-9.

Emergency New Rule, R.1986 d.169, effective April 15, 1986 (expires May 15, 1986).

See: 18 N.J.R. 999(a).

Public Notice: This rule Extension of time to file a residential property tax credit application expired May 15, 1986.

See: 19 N.J.R. 890(b).

New Rule, R.1988 d.407, effective September 6, 1988.

See: 19 N.J.R. 2255(a), 20 N.J.R. 2310(c).

Recodified from N.J.A.C. 18:35-1.19 by R.1998 d.195, effective April 20, 1998.

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

### 18:35-9.2 Interest on overpayments

(a) Interest will be paid on an overpayment of gross income tax which has not been refunded six months and one day after the later of:

1. The last date for filing a gross income tax return as prescribed by statute or permitted by an approved application for extension of time to file; or

2. The date the return, whether original or amended, requesting the refund is actually filed.