

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.

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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.

i. Example:

(1) 1975 Federal adjusted gross income:
\$15,000.00;

(c) When a taxpayer requests a refund or rebate and that taxpayer has been identified through a complete match as an alleged debtor to a claimant agency, the Division does not have liquidated debt information on the debtor file, a three-part card will be sent to the claimant agency. Return of the proper card(s) to the division would certify the accuracy of the liquidated debt, advise whether the amount had been subsequently paid, and/or advise whether or not the debtor has requested a hearing or appeal in the matter.

(d) When a taxpayer requests a refund or rebate and that taxpayer has been identified through a complete match as an alleged debtor to a claimant agency, and the Division has liquidated debt information on the debtor file, the Division will generate a notice to the taxpayer in accordance with N.J.A.C. 18:35-2.5 and will also generate a two-part card to the agency. Return of the proper card(s) to the Division would advise whether the amount has been subsequently paid, and/or advise whether or not the debtor has requested a hearing or appeal in the matter.

As amended, R.1982 d.479, effective January 3, 1983.
See: 14 N.J.R. 705(b), 15 N.J.R. 37(b).
Added first line to (c) and added (d).

18:35-2.5 Notice to taxpayer

Within 10 days after identification of a potential refund or rebate due the taxpayer and receipt of certified liquidated debt information from the claimant agency, whichever is later, the Division shall notify the alleged debtor of the proposed setoff and inform the alleged debtor of the right to make a timely request to the claimant agency for administrative resolution or for a hearing on the alleged debt and the proposed setoff.

As amended, R.1982 d.479, effective January 3, 1983.
See: 14 N.J.R. 705(b), 15 N.J.R. 37(b).

Added "identification of a potential refund ... from the claimant agency".

18:35-2.6 Administrative resolution; claimant agency proceedings

(a) No later than 45 days from the date of the Division's notice to the alleged debtor, of the proposed setoff, the claimant agency shall notify the Division of any request by the alleged debtor for administrative resolution or for a hearing or of the satisfaction of the alleged debt. Such information shall allow the Division to:

1. Maintain the account on a hold status if an administrative resolution or a hearing has been requested;
2. Set off the alleged debt from the refund or rebate where the alleged debtor does not respond to the notice provided pursuant to N.J.A.C. 18:35-2.5 within 35 days of the notice date; or
3. Release the refund or rebate check to the debtor if the debt has been satisfied.

(b) Upon written request of the claimant agency, the Division shall extend the hold status of an affected check until a final decision by the claimant agency in order to accommodate the hearing process, where:

1. The Division has been notified that administrative resolution or a hearing has been requested pursuant to (a)1 above; and
2. Where a 30 day administrative resolution period provided pursuant to N.J.A.C. 1:1-5.4(b) has failed to result in a final agreement. The period for administrative resolution shall commence upon receipt by the claimant agency of a timely request for administrative resolution or for a hearing.

(c) After five days of the close of the period for administrative resolution, the Division shall automatically release the affected refund or rebate check unless notified in writing by the claimant agency that:

1. Administrative resolution of the matter has been accomplished pursuant to N.J.A.C. 1:1-5.4(a) and the agency has certified to the Division that the debtor has acknowledged the validity of the debt and setoff; or
2. The claimant agency has transmitted the matter as a contested case to the Office of Administrative Law pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. and the Division has been notified of the docket number of the proceeding.

18:35-2.7 Agency procedure; administrative resolution; hearing

(a) When an alleged debtor makes a timely request for administrative resolution for a hearing, the claimant agency shall initiate appropriate agency procedures pursuant to the "New Jersey Uniform Administrative Procedure Rules, 1980", N.J.A.C. 1:1-1.1 et seq. The issues in an administrative resolution effort or a hearing shall include whether the claimed sum asserted as due and owing is correct and any other relevant matters. A nondebtor who claims to be a joint recipient of a refund or rebate check shall have standing to establish that fact and to contest the proposed setoff. If the claimant agency finds that an apportionment should be made in a particular case with respect to a joint entitlement, the matter shall be referred to the Division of Taxation and it will be presumed that each party is entitled to one half of the joint entitlement.

(b) Pending final agreement or final determination of the validity of the debt asserted by the claimant agency, no action shall be taken in furtherance of collection of that alleged debt through the setoff procedure established by this subchapter.

(c) No issues may be considered at the hearing which have been previously litigated. In cases where a legal judgment is in effect, the alleged debtor shall seek relief by returning to the court which produced the judgment.

Amended by R.1982 d.479, effective January 3, 1983.

See: 14 N.J.R. 705(b), 15 N.J.R. 37(b).

Added that claims will be apportioned and presumed that each party is entitled to the joint entitlement. Old (c) deleted and new (c) added.

18:35-2.8 Referral to Office of Administrative Law; hearing

(a) After completing administrative resolution efforts in a contested case, the matter shall be filed forthwith with the clerk of the Office of Administrative Law, pursuant to the requirements of the "Administrative Procedure Act", P.L. 1968, c.419 (C.52:14B-1 et seq.) and P.L. 1978, c.67 (C.52:14F-1 et seq.), as amended and supplemented and the "New Jersey Uniform Administrative Procedure Rules, 1980", N.J.A.C. 1:1-1.1 et seq.

(b) An appeal to be taken from a final determination of the division of Taxation involving a tax matter shall be taken to the Tax Court. The Office of Administrative Law shall not hear tax matters.

18:35-2.9 Finalization of setoff by claimant agency; finalization by setoff

(a) Upon either final determination of the debt due and owing the claimant agency and exhaustion of time in which an appeal may be filed or upon the debtor's and/or joint recipient's default for failure to timely request review of the asserted setoff, the claimant agency shall forthwith certify the finalized debt to the Division and in default thereof, the Division shall no longer be obligated to hold the refund for setoff.

(b) Upon receipt by the Division of a certified finalized debt from the claimant agency, the Division shall finalize the setoff by transferring the net proceeds collected for credit or payment in accordance with the provisions of N.J.A.C. 18:35-2.12 and by refunding any remaining balance to the debtor as if setoff has not occurred.

(c) Where judicial review is sought from a final agency determination, the agency shall advise the Division of such appeal and its docket number within three days of the filing of the appeal.

18:35-2.10 Notice to debtor of final setoff

Upon the finalization of setoff through administrative or judicial action, the Division shall notify the debtor in writing of the action taken along with an accounting of the action taken on any refund or rebate. If there is an outstanding balance after setoff, the notice under this section shall accompany the balance when disbursed.

18:35-2.11 Priorities in claims to setoff

(a) Priority in multiple claims to refunds or rebates allowed to be setoff under the provisions of this subchapter shall be based upon the time at which debtor files are received by the Division from the claimant agencies in descending order or priority, the earliest being first.

(b) Notwithstanding the general rule for priority set forth in (a) above, the priorities for setoff are as follows:

1. With respect to homestead rebates:
 - i. A local property tax deficiency;
 - ii. Any unpaid child support;
 - iii. A State tax deficiency;
 - iv. Other agencies, including the Internal Revenue Service, by date of claim.
2. With respect to gross income tax refunds:
 - i. Any unpaid child support;
 - ii. A State tax deficiency;
 - iii. Other agencies, including the Internal Revenue Service, by date of claim.

Amended by R.1993 d.94, effective February 16, 1993.

See: 24 N.J.R. 1967(b), 25 N.J.R. 711(c).

Revised (b).

18:35-2.12 Disposition of proceeds collected; collection assistance fees

(a) Upon effecting final setoffs, the Division shall periodically either write checks or effect credits through other methods, approved by the Division of Budget and Accounting to the respective claimant agencies for the net proceeds collected on their behalf.

(b) From the gross proceeds collected by the Division through setoff, the Division shall retain 10 percent. On and after January 1, 1985 the Division shall retain five percent of such proceeds. The amount shall be charged to the respective claimant agency as a collection assistance fee and may be subject to adjustment based upon experience.

Amended by R.1984 d.62, effective March 19, 1984.

See: 15 N.J.R. 2031(a), 16 N.J.R. 556(a).

Gross proceeds retained from "15" percent to "10" percent by the Division.

Amended by R.1984 d.579, effective December 17, 1984.

See: 16 N.J.R. 2760(b), 16 N.J.R. 3481(a).

(b) Added: "On and after . . . such proceeds. The".

18:35-2.13 Accounting to the claimant agency; credit to debtor's obligation

(a) Simultaneously with the transmittal of a check or credit for net proceeds collected to a claimant agency, the Division shall provide the agency with an accounting of the setoffs finalized for which payment is being made.

1. The accounting shall, whenever possible, include:
 - i. The full names of the debtors;
 - ii. The gross proceeds collected per individual setoff;
 - iii. The net proceeds collected per setoff; and
 - iv. The collection assistance fee charged per setoff.

(b) Upon receipt by a claimant agency of a check representing net proceeds collected on a claimant agency's behalf by the Division and an accounting of the proceeds as specified under this section, the claimant agency shall credit the debtor's obligation with the gross proceeds collected.

(c) Under special circumstances and subject to the approval of the Director of the Division of Budget and Accounting, the Division may employ such alternative method of payment and billing as may be agreed upon with a claimant agency.