

# ASSEMBLY, No. 4475

## STATE OF NEW JERSEY 211th LEGISLATURE

INTRODUCED DECEMBER 5, 2005

**Sponsored by:**

**Assemblyman LOUIS D. GREENWALD**

**District 6 (Camden)**

**SYNOPSIS**

Requires partners and other owners of pass-through entities to credit payments made on their behalf against estimated taxes to end "double withholding."

**CURRENT VERSION OF TEXT**

As introduced.



A4475 GREENWALD

2

1 AN ACT requiring owners of pass-through entities to credit certain  
2 payments the entities make on the owner's behalf against the  
3 owners' estimated taxes, amending P.L.2002, c.40 and  
4 N.J.S.54A:9-6.

5

6 **BE IT ENACTED** by the Senate and General Assembly of the State  
7 of New Jersey:

8

9 1. Section 12 of P.L.2002, c.40 (C.54:10A-15.11) is amended to  
10 read as follows:

11 12. a. (1) A partnership that is not a qualified investment  
12 partnership or an investment club and that is not listed on a United  
13 States national stock exchange shall, on or before the 15th day of the  
14 fourth month succeeding the close of each privilege period, remit a  
15 payment of tax. The amount of tax shall be equal to the sum of: all of  
16 the share of the entire net income of the partnership for that privilege  
17 period of all nonresident noncorporate partners, multiplied by an  
18 allocation factor determined, pursuant to section 6 of P.L.1945, c.162  
19 (C.54:10A-6), based on the allocation fractions of the partnership for  
20 that privilege period, and multiplied by .0637 plus all of the share of  
21 the entire net income of the partnership for that privilege period of all  
22 nonresident corporate partners, multiplied by an allocation factor  
23 determined, pursuant to section 6 of P.L.1945, c.162 (C.54:10A-6),  
24 based on the allocation fractions of the partnership for that privilege  
25 period, and multiplied by .09.

26 (2) (a) A partnership that is subject to the tax payment requirements  
27 of paragraph (1) of this subsection shall make installment payments of  
28 25% of that tax on or before the 15th day of each of the fourth month,  
29 sixth month and ninth month of the privilege period and on or before  
30 the 15th day of the first month succeeding the close of the privilege  
31 period.

32 (b) A partnership required to make an installment payment pursuant  
33 to subparagraph (a) of this paragraph shall be deemed to make an  
34 installment payment subject to the provisions of section 5 of P.L.1981,  
35 c.184 (C.54:10A-15.4) and shall be liable for any additions to tax  
36 provided thereunder.

37 b. An amount of tax paid by a partnership pursuant to paragraph  
38 (1) of subsection a. of this section and an installment payment paid  
39 pursuant to subparagraph (a) of paragraph (2) of subsection a. of this  
40 section shall be credited to accounts of its nonresident partners in  
41 proportion to each nonresident partner's share of allocated entire net  
42 income and the multiplier rate for that partner class under subsection  
43 a. of this section as of the date of its receipt by the director, and each

**EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.**

**Matter underlined thus is new matter.**

1 amount of tax so credited shall be deemed to have been paid by the  
2 respective partner in respect of the privilege period or taxable year of  
3 the partner.

4 c. For the purposes of this section:

5 "Investment club" means an entity: that is classified as a partnership  
6 for federal income tax purposes; all of the owners of which are  
7 individuals; all of the assets of which are securities, cash, or cash  
8 equivalents; the market value of the total assets of which do not  
9 exceed, as measured on the last day of its privilege period, an amount  
10 equal to the lesser of \$250,000 or \$35,000 per owner of the entity; and  
11 which is not required to register itself or its membership interests with  
12 the federal Securities and Exchange Commission; provided that  
13 beginning with privilege periods commencing on or after January 1,  
14 2003 the director shall prescribe the total asset value amounts which  
15 shall apply by increasing the \$250,000 total asset amount and the per  
16 owner \$35,000 amount hereinabove by an inflation adjustment factor,  
17 which amounts shall be rounded to the next highest multiple of \$100.  
18 The inflation adjustment factor shall be equal to the factor calculated  
19 by dividing the consumer price index for urban wage earners and  
20 clerical workers for the nation, as prepared by the United States  
21 Department of Labor for September of the calendar year prior to the  
22 calendar year in which the privilege period begins, by that index for  
23 September of 2001;

24 "Nonresident noncorporate partner" means, an individual, an estate  
25 or a trust subject to taxation pursuant to the "New Jersey Gross  
26 Income Tax Act," N.J.S.54A:1-1 et seq., that is not a resident  
27 taxpayer or a resident estate or trust under that act;

28 "Nonresident corporate partner" means a partner that is not an  
29 individual, an estate or a trust subject to taxation pursuant to the "New  
30 Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., that is not a  
31 corporation exempt from tax pursuant to section 3 of P.L.1945, c.162  
32 (C.54:10A-3), and that does not maintain a regular place of business  
33 in this State other than a statutory office; and

34 "Partner" means an owner of an interest in the partnership, in  
35 whatever manner that owner and ownership interest are designated.  
36 (cf: P.L.2003, c.256, s.1)

37

38 2. N.J.S.54A:9-6 is amended to read as follows:

39 54A:9-6. Additions to tax and civil penalties. (a) Failure to file tax  
40 return. In case of failure to file a tax return under this act on or before  
41 the prescribed date (determined with regard to any extension of time  
42 for filing), unless it is shown that such failure is due to reasonable  
43 cause and not due to willful neglect, there shall be added to the  
44 amount required to be shown as tax on such return such amount as is  
45 required under the State Tax Uniform Procedure Law, R.S.54:48-1 et  
46 seq. For this purpose, the amount of tax required to be shown on the

1 return shall be reduced by the amount of any part of the tax which is  
2 paid on or before the date prescribed for payment of the tax and by the  
3 amount of any credit against the tax which may be claimed upon the  
4 return.

5 (b) Deficiency due to negligence. If any part of a deficiency is due  
6 to negligence or intentional disregard of this act or rules or regulations  
7 hereunder (but without intent to defraud), there shall be added to the  
8 tax an amount equal to 10% of the deficiency.

9 (c) Failure to file declaration or underpayment of estimated tax.  
10 If any taxpayer fails to file a declaration of estimated tax or fails to pay  
11 all or any part of an installment of estimated tax, the taxpayer shall be  
12 deemed to have made an underpayment of estimated tax except as  
13 provided pursuant to subsection (d) of this section. There shall be  
14 added to the tax for the taxable year an amount at the rate as is  
15 required under the State Tax Uniform Procedure Law, R.S.54:48-1 et  
16 seq., upon the amount of the underpayment for the period of the  
17 underpayment but not beyond the 15th day of the fourth month  
18 following the close of the taxable year. The amount of underpayment  
19 shall be the excess of the lesser of: (1) the amount of the installment  
20 which would be required to be paid if the estimated tax were equal to  
21 80% of the tax (two-thirds of the tax for farmers referred to in  
22 subsection (e) of section 54A:8-4) shown on the return for the taxable  
23 year (or if no return was filed, of the tax for such year), or (2) 100%  
24 of the tax shown on the tax return of the taxpayer for the preceding  
25 taxable year; over the amount, if any, of the installment paid on or  
26 before the last day prescribed for such payment. No underpayment  
27 shall be deemed to exist with respect to a declaration or installment  
28 otherwise due on or after the taxpayer's death.

29 (d) Exception to addition for underpayment of estimated tax. The  
30 addition to tax under subsection (c) with respect to any underpayment  
31 of any installment shall not be imposed if the total amount of all  
32 payments of estimated tax and all payments of tax made pursuant to  
33 subsection a. of section 12 of P.L.2002, c.40 (C.54:10A-15.11) and  
34 credited to the taxpayer pursuant to subsection b. of section 12 of  
35 P.L.2002, c.40 made on or before the last date prescribed for the  
36 payment of such installment equals or exceeds whichever of the  
37 following set forth in paragraphs (1) and (2) and subject to paragraph  
38 (3) is the lesser--

39 (1) The amount which would have been required to be paid on or  
40 before such date if the estimated tax were whichever of the following  
41 is the least--

42 (A) An amount equal to 100% of the tax shown on the return of  
43 the taxpayer for the preceding taxable year, except as provided  
44 pursuant to paragraph (3) of this subsection, if a return showing a  
45 liability for tax was filed by the taxpayer for the preceding taxable year  
46 and such preceding year was a taxable year of 12 months, or

1 (B) An amount equal to 100% of the tax computed, except as  
2 provided pursuant to paragraph (3) of this subsection, at the rates  
3 applicable to the taxable year, on the basis of the taxpayer's status with  
4 respect to the taxpayer's personal exemptions for the taxable year, but  
5 otherwise on the basis of the facts shown on the taxpayer's return for,  
6 and the law applicable to, the preceding taxable year, or

7 (C) An amount equal to 80% of the tax for the taxable year  
8 (two-thirds of the tax for farmers referred to in subsection (e) of  
9 section 54A:8-4) computed by placing on an annualized basis the  
10 income for the months in the taxable year ending before the month in  
11 which the installment is required to be paid (or, in the case of a trust  
12 or estate, the income for the months ending before the date one month  
13 before the month in which the installment is required). For purposes  
14 of this subparagraph, the income shall be placed on an annualized basis  
15 by--

16 (i) Multiplying by 12 (or, in the case of a taxable year of less than  
17 12 months, the number of months in the taxable year) the income for  
18 the months in the taxable year ending before the month in which the  
19 installment is required to be paid (or, in the case of a trust or estate,  
20 the income for the months ending before the date one month before  
21 the month in which the installment is required),

22 (ii) Dividing the resulting amount by the number of months in the  
23 taxable year ending before the month in which such installment date  
24 falls (or, in the case of a trust or estate, the number of months ending  
25 before the date one month before the month in which such installment  
26 date falls), and

27 (iii) Deducting from such amount the deductions for personal  
28 exemptions allowable for the taxable year (such personal exemptions  
29 being determined as of the last date prescribed for payment of the  
30 installment); or

31 (2) An amount equal to 90% of the tax computed, at the rates  
32 applicable to the taxable year, on the basis of the actual income for the  
33 months in the taxable year ending before the month in which the  
34 installment is required to be paid.

35 (3) If the taxable gross income shown on the return of the taxpayer  
36 for the preceding taxable year exceeds \$150,000 (\$75,000 in the case  
37 of a married individual within the meaning of section 7703 of the  
38 federal Internal Revenue Code of 1986, 26 U.S.C. s.7703, filing  
39 separately for the taxable year for which the amount of the installment  
40 is being determined) subparagraphs (A) and (B) of paragraph (1) of  
41 this subsection shall be applied by substituting "110%" for "100%".  
42 For purposes of this paragraph, "taxable gross income" means gross  
43 income after any allowable deductions under chapter 3 or 3A of the  
44 "New Jersey Gross Income Tax Act" (C.54A:3-1 et seq and  
45 54A:3A-15 et seq); or, in the case of a trust or estate, gross income  
46 after any allowable deductions or exemptions, income commissions

1 and amounts distributed or credited to beneficiaries; and "gross  
2 income" for a nonresident means gross income calculated as if such  
3 nonresident were a resident.

4 (e) Deficiency due to fraud. If any part of a deficiency is due to  
5 fraud, there shall be added to the tax an amount equal to 50% of the  
6 deficiency. This amount shall be in lieu of any other addition to tax  
7 imposed by subsection (a) or (b).

8 (f) Nonwillful failure to pay withholding tax. If any employer,  
9 without intent to evade or defeat any tax imposed by this act or the  
10 payment thereof, shall fail to make a return and pay a tax withheld by  
11 him at the time required by or under the provisions of section 54A:7-4,  
12 such employer shall be liable for such tax and shall pay the same  
13 together with interest thereon and the addition to tax provided in  
14 subsection (a), and such interest and addition to tax shall not be  
15 charged to or collected from the employee by the employer. The  
16 director shall have the same rights and powers for the collection of  
17 such tax, interest and addition to tax against such employer as are now  
18 prescribed by this act for the collection of tax against an individual  
19 taxpayer.

20 (g) Willful failure to collect and pay over tax. Any person required  
21 to collect, truthfully account for, and pay over the tax imposed by this  
22 act who willfully fails to collect such tax or truthfully account for and  
23 pay over such tax or willfully attempts in any manner to evade or  
24 defeat the tax or the payment thereof, shall, in addition to other  
25 penalties provided by law, be liable to a penalty equal to the total  
26 amount of the tax evaded, or not collected, or not accounted for and  
27 paid over. No addition to tax under subsection (b) or (c) shall be  
28 imposed for any offense to which this subsection applies.

29 (h) Failure to file certain information returns. In case of each  
30 failure to file a statement of a payment to another person, required  
31 under authority of subsection (c) of section 54A:8-6 (relating to  
32 information at source, including the duplicate statement of tax  
33 withheld on wages) on the date prescribed therefor (determined with  
34 regard to any extension of time for filing), unless it is shown that such  
35 failure is due to reasonable cause and not to willful neglect, there shall,  
36 upon notice and demand by the director and in the same manner as tax,  
37 be paid by the person so failing to file the statement, a penalty of \$2.00  
38 for each statement not so filed, but the total amount imposed on the  
39 delinquent person for all such failures during any calendar year shall  
40 not exceed \$2,000.00.

41 (i) Additional penalty. Any person who with fraudulent intent shall  
42 fail to pay, or to deduct or withhold and pay, any tax, or to make,  
43 render, sign or certify any return or declaration of estimated tax or to  
44 supply any information within the time required by or under this act,  
45 shall be liable to penalty of not more than \$5,000.00, in addition to any  
46 other amounts required under this act, to be imposed, assessed and

1 collected by the director. The director shall have the power, in his  
2 discretion, to waive, reduce or compromise any penalty under this  
3 subsection.

4 (j) Additions treated as tax. The additions to tax and penalties  
5 provided by this section shall be paid upon notice and demand and  
6 shall be assessed, collected and paid in the same manner as taxes and  
7 any reference in this act to income tax or tax imposed by this act, shall  
8 be deemed also to refer to the additions to tax and penalties provided  
9 by this section. For purposes of section 54A:9-2, this subsection shall  
10 not apply to:

11 (1) Any addition to tax under subsection (a) except as to that  
12 portion attributable to a deficiency;

13 (2) Any addition to tax under subsection (e); and

14 (3) Any additional penalty under subsection (i).

15 (k) Determination of deficiency. For purposes of subsections (b)  
16 and (c), the amount shown as the tax by the taxpayer upon his return  
17 shall be taken into account in determining the amount of the deficiency  
18 only if such return was filed on or before the last day prescribed for  
19 the filing of such return, determined with regard to any extension of  
20 time for such filing.

21 (l) Person defined. For purposes of subsections (f), (g), (h) and (i),  
22 the term person or employer includes an individual, corporation or  
23 partnership or an officer or employee of any corporation (including a  
24 dissolved corporation) or a member or employee of any partnership,  
25 who as such officer, employee, or member is under a duty to perform  
26 the act in respect of which the violation occurs.

27 (cf: P.L.1998, c.106, s.16)

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29 3. This act shall take effect immediately and apply to privilege  
30 periods beginning on or after January 1 next following enactment.

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STATEMENT

34

35 This bill requires partnerships and other pass-through entities,  
36 required under current law to make annual tax payments on behalf of  
37 nonresident partners and other owners, to make partial payments  
38 earlier. This schedule will allow the partners to count those payments  
39 as part of their payment of estimated taxes.

40 The Business Tax Reform Act of 2002 required most "pass-  
41 through" entities like partnerships to make a payment on the share of  
42 the New Jersey income of each nonresident owner to credited to  
43 separate accounts for each owner against their respective tax liabilities,  
44 like withholding. However, many of these owners themselves make  
45 quarterly payments of estimated taxes, so this had the effect of  
46 requiring "double withholding."

**A4475 GREENWALD**

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1       This bill eliminates the "double withholding" problem by allowing  
2 the partnerships to make partial payments of their required payments  
3 earlier, to coincide with the timing of estimated payments, and by  
4 allowing the amount of the partnership payments to be credited against  
5 the partners' estimated payment liabilities. The advance tax partnership  
6 payments will be made on or before the 15th day of the fourth month,  
7 sixth month and ninth month of the privilege period and on or before  
8 the 15th day of the first month succeeding the close of the privilege  
9 period.