

ASSEMBLY, No. 1657

STATE OF NEW JERSEY 213th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2008 SESSION

Sponsored by:

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SYNOPSIS

Allows certain self-employed business owners to deduct their own pension plan contributions from gross income under the gross income tax.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel



1 AN ACT allowing certain business owners to deduct certain pension
2 plan contributions from gross income under the gross income
3 tax, supplementing Title 54A of the New Jersey Statutes.
4

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

8 1. A taxpayer who is a "self-employed individual" within the
9 meaning of clause (B) of paragraph (1) of subsection (c) of section
10 401 of the federal Internal Revenue Code of 1986, 26 U.S.C.s.401,
11 shall be allowed to deduct from the taxpayer's gross income for the
12 taxable year an amount equal to the amount of pension and profit
13 sharing plan contributions for the taxpayer that the taxpayer is
14 allowed as a deduction for the tax year for federal tax purposes
15 pursuant to section 404 of the federal Internal Revenue Code of
16 1986, 26 U.S.C.s.404; provided however, that no amount allowed as
17 an exclusion pursuant to section 2 of P.L.1983, c.571 (C.54A:6-21)
18 shall also be allowed as a deduction pursuant to this section.
19

20 2. This act shall take effect immediately and apply to taxable
21 years beginning on or after the January 1 next following enactment.
22

23
24 STATEMENT
25

26 This bill allows people who own their own businesses to deduct
27 the contributions they make for their own retirement from income
28 taxable under the New Jersey gross income tax.

29 Currently, a corporation can take a business expense deduction
30 for the amount of the pension plan contributions it makes for its
31 employees for federal and New Jersey corporate tax purposes. The
32 owner-managers of a corporation and the employees of the
33 corporation may exclude the value of the pension plan contributions
34 from their income under the federal personal income tax and the
35 New Jersey gross income tax until the pension is later paid.

36 For many years the "self-employed" (sole proprietors, partners of
37 partnerships, and members of limited liability companies) found
38 that their employees could participate in tax-qualified pension plans
39 but that they themselves could not. Since 1962, however, the
40 federal Self-Employed Individuals Retirement Act has encouraged
41 these small business owners to provide themselves with pensions by
42 allowing the self-employed to establish and participate in "Keogh"
43 plans (named after the sponsor of the initial federal law) similar to
44 those for corporate employees and on a similar tax basis.

45 However, no business expense deduction has been allowed under
46 the New Jersey gross income tax for the Keogh plan contributions
47 for the retirement of the owners of these small businesses.

48 Recently, the case of *Reck v. Director, Div. of Taxation*, 18

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1 N.J.Tax 598 (2000) propelled this issue into the spotlight. The
2 court determined through complex reasoning that the Keogh plan
3 contributions made by a partnership on behalf of a partner were
4 deductible by that partner for New Jersey gross income tax
5 purposes. That decision is under appeal by the Division of
6 Taxation, and even if sustained it is not entirely clear under what
7 circumstances Keogh plan contributions will be deductible or
8 whether the decision also applies to the contributions of sole
9 proprietors.

10 This bill will set deduction rules for sole proprietors, partners
11 and the members of limited liability companies at parity with the
12 rules that apply to incorporated businesses, allowing the self-
13 employed to deduct the same pension contribution amounts they
14 provide themselves from their New Jersey taxable gross income as
15 they may deduct from their federal taxable income.