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

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

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

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

STATEMENT

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

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

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

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

Recently, the case of Reck v. Director, Div. of Taxation, 18
N.J.Tax 598 (2000) propelled this issue into the spotlight. The court determined through complex reasoning that the Keogh plan contributions made by a partnership on behalf of a partner were deductible by that partner for New Jersey gross income tax purposes. That decision is under appeal by the Division of Taxation, and even if sustained it is not entirely clear under what circumstances Keogh plan contributions will be deductible or whether the decision also applies to the contributions of sole proprietors.

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