

SENATE, No. 1793

STATE OF NEW JERSEY 215th LEGISLATURE

INTRODUCED MARCH 15, 2012

Sponsored by:

Senator SHIRLEY K. TURNER

District 15 (Hunterdon and Mercer)

SYNOPSIS

Provides that certain alimony payments may be deducted from gross income for purposes of the “Homestead Property Tax Credit Act.”

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT providing that certain alimony payments may be deducted
2 from gross income for purposes of "Homestead Property Tax
3 Credit Act," amending P.L.1990, c.61.

4
5 **BE IT ENACTED** *by the Senate and General Assembly of the State*
6 *of New Jersey:*

7
8 1. Section 2 of P.L.1990, c.61 (C.54:4-8.58) is amended to read
9 as follows:

10 2. As used in sections 2 through 10 of P.L.1990, c.61 (C.54:4-
11 8.58 through 54:4-8.66) and sections 3 and 14 through 16 of
12 P.L.1999, c.63 (C.54:4-8.58a and 54:4-8.66a through C.54:4-8.66c):

13 "Annualized rent" means, for tax years 2004 and thereafter, the
14 rent paid by the claimant during the tax year for which the
15 homestead rebate is being claimed, and if paid for a lease term
16 covering less than the full tax year, the actual rent paid for the days
17 during the term of the lease of the homestead proportionalized as if
18 the term of the lease had been for 365 days of the tax year;

19 "Arm's-length transaction" means a transaction in which the
20 parties are dealing from equal bargaining positions, neither party is
21 subject to the other's control or dominant influence, and the
22 transaction is entirely legal in all respects and is treated with
23 fairness and integrity;

24 "Condominium" means the form of real property ownership
25 provided for under the "Condominium Act," P.L.1969, c.257
26 (C.46:8B-1 et seq.);

27 "Continuing care retirement community" means a residential
28 facility primarily for retired persons where lodging and nursing,
29 medical or other health related services at the same or another
30 location are provided as continuing care to an individual pursuant to
31 an agreement effective for the life of the individual or for a period
32 greater than one year, including mutually terminable contracts, and
33 in consideration of the payment of an entrance fee with or without
34 other periodic charges;

35 "Cooperative" means a housing corporation or association which
36 entitles the holder of a share or membership interest thereof to
37 possess and occupy for dwelling purposes a house, apartment,
38 manufactured or mobile home or other unit of housing owned or
39 leased by the corporation or association, or to lease or purchase a
40 unit of housing constructed or to be constructed by the corporation
41 or association;

42 "Director" means the Director of the Division of Taxation in the
43 Department of the Treasury;

44 "Dwelling house" means any residential property assessed as real
45 property which consists of not more than four units, of which not

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 more than one may be used for commercial purposes, but shall not
2 include a unit in a condominium, cooperative, horizontal property
3 regime or mutual housing corporation;

4 "Homestead" means:

5 a. (1) a dwelling house and the land on which that dwelling
6 house is located which constitutes the place of the claimant's
7 domicile and is owned and used by the claimant as the claimant's
8 principal residence;

9 (2) a dwelling house situated on land owned by a person other
10 than the claimant which constitutes the place of the claimant's
11 domicile and is owned and used by the claimant as the claimant's
12 principal residence;

13 (3) a condominium unit or a unit in a horizontal property regime
14 which constitutes the place of the claimant's domicile and is owned
15 and used by the claimant as the claimant's principal residence;

16 (4) for purposes of this definition as provided in this subsection,
17 in addition to the generally accepted meaning of owned or
18 ownership, a homestead shall be deemed to be owned by a person if
19 that person is a tenant for life or a tenant under a lease for 99 years
20 or more and is entitled to and actually takes possession of the
21 homestead under an executory contract for the sale thereof or under
22 an agreement with a lending institution which holds title as security
23 for a loan, or is a resident of a continuing care retirement
24 community pursuant to a contract for continuing care for the life of
25 that person which requires the resident to bear a share of the
26 property taxes that are assessed upon the continuing care retirement
27 community, if a share is attributable to the unit that the resident
28 occupies;

29 b. a unit in a cooperative or mutual housing corporation which
30 constitutes the place of domicile of a residential shareholder or
31 lessee therein, or of a lessee, or shareholder who is not a residential
32 shareholder therein, and which is used by the claimant as the
33 claimant's principal residence; and

34 c. a unit of residential rental property which unit constitutes the
35 place of the claimant's domicile and is used by the claimant as the
36 claimant's principal residence;

37 "Horizontal property regime" means the form of real property
38 ownership provided for under the "Horizontal Property Act,"
39 P.L.1963, c.168 (C.46:8A-1 et seq.);

40 "Gross income" means all New Jersey gross income required to
41 be reported pursuant to the "New Jersey Gross Income Tax Act,"
42 N.J.S.54A:1-1 et seq., other than income excludable from the gross
43 income tax return, but before reduction thereof by any applicable
44 exemptions, deductions and credits, received during the taxable
45 year by the owner or residential shareholder in, or lessee of, a
46 homestead, except that a deduction shall be allowed for the payment
47 of alimony or separate maintenance when such payments are

1 includible in the gross income of a recipient pursuant to subsection
2 n. of N.J.S.54A:5-1;

3 "Manufactured home" or "mobile home" means a unit of housing
4 which:

5 (1) Consists of one or more transportable sections which are
6 substantially constructed off site and, if more than one section, are
7 joined together on site;

8 (2) Is built on a permanent chassis;

9 (3) Is designed to be used, when connected to utilities, as a
10 dwelling on a permanent or nonpermanent foundation; and

11 (4) Is manufactured in accordance with the standards
12 promulgated for a manufactured home by the Secretary of the
13 United States Department of Housing and Urban Development
14 pursuant to the "National Manufactured Housing Construction and
15 Safety Standards Act of 1974," Pub.L.93-383 (42 U.S.C. s.5401 et
16 seq.) and the standards promulgated for a manufactured or mobile
17 home by the commissioner pursuant to the "State Uniform
18 Construction Code Act," P.L.1975, c.217 (C.52:27D-119 et seq.);

19 "Mobile home park" means a parcel of land, or two or more
20 parcels of land, containing no fewer than 10 sites equipped for the
21 installation of manufactured or mobile homes, where these sites are
22 under common ownership and control for the purpose of leasing
23 each site to the owner of a manufactured or mobile home for the
24 installation thereof, and where the owner or owners provide
25 services, which are provided by the municipality in which the park
26 is located for property owners outside the park, which services may
27 include but shall not be limited to:

28 (1) The construction and maintenance of streets;

29 (2) Lighting of streets and other common areas;

30 (3) Garbage removal;

31 (4) Snow removal; and

32 (5) Provisions for the drainage of surface water from home sites
33 and common areas;

34 "Mutual housing corporation" means a corporation not-for-profit,
35 incorporated under the laws of this State on a mutual or cooperative
36 basis within the scope of section 607 of the Lanham Act (National
37 Defense Housing), Pub.L.849, 76th Congress (42 U.S.C. s.1521 et
38 seq.), as amended, which acquired a National Defense Housing
39 Project pursuant to that act;

40 "Principal residence" means a homestead actually and
41 continually occupied by a claimant as the claimant's permanent
42 residence, as distinguished from a vacation home, property owned
43 and rented or offered for rent by the claimant, and other secondary
44 real property holdings;

45 "Property tax" means payments to a municipality based upon an
46 assessment made by the municipality upon real property on an ad
47 valorem basis on land and improvements, but shall not include
48 payments made in lieu of taxes;

1 "Rent" means the amount due in an arm's-length transaction
2 solely for the right of occupancy of a homestead that is a unit of
3 residential rental property. Rent shall not include any amount paid
4 under the federal Housing Choice Voucher (Section 8) Program or
5 paid as a rental assistance grant under section 1 of P.L.2004, c.140
6 (C.52:27D-287.1). If the director finds that the parties in a rental
7 transaction have not dealt with each other in an arm's-length
8 transaction and that the rent due was excessive, the director may,
9 for purposes of the homestead rebate claim, adjust the rent claimed
10 in the homestead rebate application to a reasonable amount of rent;

11 "Rent constituting property taxes" means 18% of the rent paid by
12 the homestead rebate claimant during the tax year on a unit of
13 residential rental property which constitutes the claimant's
14 homestead, and in the case of a manufactured home or mobile home
15 in a mobile home park which constitutes the claimant's homestead
16 means 18% of the site fee paid by the claimant during the tax year
17 to the owner of the mobile home park. Provided however, that for
18 tax year 2004 and for each tax year thereafter, rent constituting
19 property taxes shall equal 18% of annualized rent, and in the case of
20 a manufactured home or mobile home in a mobile home park rent
21 constituting property taxes shall equal 18% of a similarly
22 annualized site fee;

23 "Resident" means an individual:

24 a. who is domiciled in this State, unless he maintains no
25 permanent place of abode in this State, maintains a permanent place
26 of abode elsewhere, and spends in the aggregate no more than 30
27 days of the tax year in this State; or

28 b. who is not domiciled in this State but maintains a permanent
29 place of abode in this State and spends in the aggregate more than
30 183 days of the tax year in this State, unless the individual is in the
31 Armed Forces of the United States;

32 "Residential rental property" means:

33 a. any building or structure or complex of buildings or
34 structures in which dwelling units are rented or leased or offered for
35 rental or lease for residential purposes;

36 b. a rooming house, hotel or motel, if the rooms constituting
37 the homestead are equipped with kitchen and bathroom facilities;

38 c. any building or structure or complex of buildings or
39 structures constructed under the following sections of the National
40 Housing Act (Pub.L.73-479) as amended and supplemented: section
41 202, Housing Act of 1959 (Pub.L.86-372) and as subsequently
42 amended, section 231, Housing Act of 1959; and

43 d. a site in a mobile home park equipped for the installation of
44 manufactured or mobile homes, where these sites are under
45 common ownership and control for the purpose of leasing each site
46 to the owner of a manufactured or mobile home for the installation
47 thereof;

1 "Residential shareholder in a cooperative or mutual housing
2 corporation" means a tenant or holder of a membership interest in
3 that cooperative or corporation, whose residential unit therein
4 constitutes the tenant or holder's domicile and principal residence,
5 and who may deduct real property taxes for purposes of federal
6 income tax pursuant to section 216 of the federal Internal Revenue
7 Code of 1986, 26 U.S.C. s.216; and

8 "Tax year" means the calendar year in which property taxes are
9 due and payable.

10 (cf: 2007, c.62, s.21)

11
12 2. This act shall take effect immediately and apply to tax years
13 beginning on or after January 1 next following the date of
14 enactment.

15 16 17 STATEMENT

18
19 This bill prevents alimony from being counted as gross income
20 twice for purposes of the "Homestead Property Tax Credit Act." At
21 present, the income eligibility provisions of the "Homestead
22 Property Tax Credit Act" rely upon a definition of "gross income"
23 that encompasses all income and uniformly excludes all
24 exemptions, deductions and credits afforded under the Gross
25 Income Tax. Alimony payments are one of the excluded
26 deductions. This means that alimony paid by one spouse to the
27 other is counted as gross income for both spouses. This bill would
28 enable the spouse making alimony payments to deduct such
29 payments from his or her gross income for purposes of the
30 "Homestead Property Tax Credit Act," if such payments are
31 includible in the gross income tax return of the former spouse
32 receiving alimony. The purpose of creating this deduction is to
33 provide a more equitable method for determining gross income
34 under the "Homestead Property Tax Credit Act."