

ASSEMBLY, No. 2650

STATE OF NEW JERSEY 218th LEGISLATURE

INTRODUCED FEBRUARY 1, 2018

Sponsored by:

Assemblyman ROY FREIMAN

District 16 (Hunterdon, Mercer, Middlesex and Somerset)

Assemblywoman JOANN DOWNEY

District 11 (Monmouth)

SYNOPSIS

Recognizes residential property tax advance payments for gross income tax homestead property tax deduction.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 2/2/2018)

1 AN ACT concerning the gross income tax deduction for residential
2 property tax advance payments by homeowners, amending and
3 supplementing P.L.1996, c.60.

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.1996, c.60 (C.54A:3A-16) is amended to
9 read as follows:

10 2. As used in this act:

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

14 "Continuing care retirement community" means a residential
15 facility primarily for retired persons where lodging and nursing,
16 medical or other health related services at the same or another
17 location are provided as continuing care to an individual pursuant to
18 an agreement effective for the life of the individual or for a period
19 greater than one year, including mutually terminable contracts, and
20 in consideration of the payment of an entrance fee with or without
21 other periodic charges.

22 "Cooperative" means a housing corporation or association which
23 entitles the holder of a share or membership interest thereof to
24 possess and occupy for dwelling purposes a house, apartment,
25 manufactured or mobile home or other unit of housing owned or
26 leased by the corporation or association, or to lease or purchase a
27 unit of housing constructed or to be constructed by the corporation
28 or association.

29 "Dwelling house" means any residential property assessed as real
30 property which consists of not more than four units, of which not
31 more than one may be used for commercial purposes, but shall not
32 include a unit in a condominium, cooperative, horizontal property
33 regime or mutual housing corporation.

34 "Homestead" means:

35 a. a dwelling house and the land on which that dwelling house is
36 located which constitutes the place of the taxpayer's domicile and is
37 owned and used by the taxpayer as the taxpayer's principal
38 residence;

39 b. a dwelling house situated on land owned by a person other
40 than the taxpayer which constitutes the place of the taxpayer's
41 domicile and is owned and used by the taxpayer as the taxpayer's
42 principal residence;

43 c. a condominium unit or a unit in a horizontal property regime
44 or a continuing care retirement community which constitutes the

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 place of the taxpayer's domicile and is owned and used by the
2 taxpayer as the taxpayer's principal residence.

3 In addition to the generally accepted meaning of owned or
4 ownership, a homestead shall be deemed to be owned by a person if
5 that person is a tenant for life or a tenant under a lease for 99 years
6 or more, is entitled to and actually takes possession of the
7 homestead under an executory contract for the sale thereof or under
8 an agreement with a lending institution which holds title as security
9 for a loan, or is a resident of a continuing care retirement
10 community pursuant to a contract for continuing care for the life of
11 that person which requires the resident to bear, separately from any
12 other charges, the proportionate share of property taxes attributable
13 to the unit that the resident occupies;

14 d. a unit in a cooperative or mutual housing corporation which
15 constitutes the place of domicile of a residential shareholder or
16 lessee therein, or of a lessee or shareholder who is not a residential
17 shareholder therein, which is used by the taxpayer as the taxpayer's
18 principal residence; and

19 e. a unit of residential rental property, which unit constitutes the
20 place of the taxpayer's domicile and is used by the taxpayer as the
21 taxpayer's principal residence.

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

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

31 "Principal residence" means a homestead actually and
32 continually occupied by a taxpayer as the taxpayer's permanent
33 residence, as distinguished from a vacation home, property owned
34 and rented or offered for rent by the taxpayer, and other secondary
35 real property holdings.

36 "Property taxes" means payments to municipalities for which an
37 assessment by a municipality is to be prepared or has been made on
38 an ad valorem basis on both land and improvements, and shall not
39 include payments made in lieu of taxes.

40 "Rent constituting property taxes" means 18% of the rent paid by
41 the taxpayer for occupancy during the taxable year of a unit of
42 residential rental property which the taxpayer occupies as a
43 principal residence; notwithstanding the definition of "property
44 taxes" herein, rent constituting property taxes includes the rent paid
45 for the occupancy of a manufactured home installed in a mobile
46 home park.

47 "Residential rental property" means:

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

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

6 c. any building or structure or complex of buildings or structures
7 constructed under the following sections of the National Housing
8 Act (Pub.L.73-479) as amended and supplemented: section 202,
9 Housing Act of 1959 (Pub.L.86-372) and as subsequently amended,
10 section 231, Housing Act of 1959.

11 "Residential shareholder in a cooperative or mutual housing
12 corporation" means a tenant or holder of a membership interest in
13 that cooperative or corporation, whose residential unit therein
14 constitutes the tenant's or holder's domicile and principal residence,
15 and who may deduct real property taxes for purposes of federal
16 income tax pursuant to section 216 of the federal Internal Revenue
17 Code of 1986, 26 U.S.C.216.

18 (cf: P.L.1996, c.60, s.2)

19

20 2. Section 3 of P.L.1996, c.60 (C.54A:3A-17) is amended to
21 read as follows:

22 3. a. A resident taxpayer under the "New Jersey Gross Income
23 Tax Act," N.J.S.54A:1-1 et seq., shall be allowed a deduction from
24 gross income for property taxes not in excess of \$10,000, subject to
25 the limitations of subsection f. of this section, due and paid for the
26 calendar year in which the taxes are due and payable, and paid in
27 advance in the 2017 calendar year for the 2018 calendar year in
28 which the taxes are due and payable, on the taxpayer's homestead.

29 b. A deduction for property taxes shall be allowed pursuant to
30 this section in relation to the amount of the property taxes actually
31 paid by or allocable to a resident taxpayer who has more than one
32 homestead, but the aggregate amount of the property taxes claimed
33 shall not exceed the total of the proportionate amounts of property
34 taxes assessed and levied against or allocable to each homestead for
35 the portion of the taxable year for which the taxpayer occupied it as
36 the taxpayer's principal residence.

37 c. If title to a homestead is held by more than one individual as
38 joint tenants or tenants in common, each individual shall be allowed
39 a deduction pursuant to this section only in relation to the
40 individual's proportionate share of the property taxes assessed and
41 levied against the homestead. The proportionate share shall be
42 equal to that of all other individuals who hold the title, but if the
43 conveyance under which the title is held provides for unequal
44 interests therein, a taxpayer's share of the property taxes shall be in
45 proportion to the taxpayer's interest in the title.

46 d. If title to a homestead is held by a husband and wife who
47 own the homestead as tenants by the entirety, or if that husband and

1 wife are both residential shareholders of a cooperative or mutual
2 housing corporation and occupy the same homestead therein, and
3 who elect to file separate income tax returns pursuant to the "New
4 Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., that husband
5 and wife shall each be entitled to one-half of the deduction for
6 property taxes for which they may be jointly eligible pursuant to
7 this section.

8 e. If the homestead is a dwelling house consisting of more than
9 one unit, that taxpayer shall be allowed a deduction for property
10 taxes only in relation to the proportionate share of the property
11 taxes assessed and levied against the residential unit occupied by
12 the taxpayer, as determined by the local tax assessor.

13 f. Notwithstanding the provisions of subsection a. of this
14 section to the contrary: (1) a resident taxpayer shall be allowed a
15 deduction for a taxpayer's taxable year beginning during 1996 based
16 on 50% of the property taxes not in excess of \$5,000 paid on the
17 taxpayer's homestead; **and** (2) a resident taxpayer shall be
18 allowed a deduction for a taxpayer's taxable year beginning during
19 1997 based on 75% of the property taxes not in excess of \$7,500
20 paid on the taxpayer's homestead; and (3) a resident taxpayer shall
21 be allowed a deduction for a taxpayer's taxable year beginning
22 during 2017 for property taxes not in excess of \$20,000 paid on the
23 taxpayer's homestead.

24 g. Notwithstanding any other provision of this section, the
25 deduction allowed under this section to a resident taxpayer eligible
26 to receive a homestead property tax reimbursement pursuant to
27 P.L.1997, c.348 (C.54:4-8.67 et al.) shall not exceed that resident
28 taxpayer's base year property tax liability as determined pursuant to
29 P.L.1997, c.348 (C.54:4-8.67 et al.).

30 h. Notwithstanding any other provision of this section, for the
31 taxable year beginning January 1, 2009, a taxpayer who has gross
32 income for the taxable year of more than \$250,000 and is not:

- 33 (1) 65 years of age or older at the close of the taxable year; or
34 (2) allowed to claim a personal deduction as a blind or disabled
35 taxpayer pursuant to subsection (b) of N.J.S.54A:3-1,
36 shall not be allowed a deduction pursuant to this section;

37 provided however, the deduction for a taxpayer who has gross
38 income for the taxable year of more than \$150,000 but not
39 exceeding \$250,000 and is not:

- 40 (1) 65 years of age or older at the close of the taxable year; or
41 (2) allowed to claim a personal deduction as a blind or disabled
42 taxpayer pursuant to subsection (b) of N.J.S.54A:3-1,
43 shall not exceed \$5,000.

44 (cf: P.L.2009, c.69, s.2)

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46 3. Section 5 of P.L.1996, c.60 (C.54A:3A-19) is amended to
47 read as follows:

1 5. a. If a taxpayer who is eligible for a deduction for property
2 taxes under section 3 of this act for a part of the taxable year is also
3 eligible for a deduction for rent constituting property taxes under
4 section 4 of this act for a part of the taxable year, the taxpayer shall
5 be allowed a deduction, not in excess of \$10,000, subject to the
6 limitations of subsection b. of this section, the amount of which
7 shall be equal to the sum of the amount of property taxes due and
8 paid for the calendar year in which the property taxes are due and
9 payable, and paid in advance in the 2017 calendar year for the 2018
10 calendar year in which the taxes are due and payable, on a
11 homestead that is not a unit of residential rental property and the
12 amount of rent constituting property taxes due and paid for the
13 calendar year in which the rent constituting property taxes is due
14 and payable for the occupancy of a homestead that is a unit of
15 residential rental property, provided however, that the amount of
16 property taxes shall be subject to the limitations set forth in
17 subsections b. through **[e.]** f. of section 3 and the amount of rent
18 constituting property taxes shall be subject to the limitations set
19 forth in subsections b. and c. of section 4 as may be applicable.

20 b. Notwithstanding the provisions of subsection a. of this section
21 to the contrary: (1) a taxpayer who is eligible for a deduction for
22 property taxes under section 3 of this act for a part of the taxable
23 year and is also eligible for a deduction for rent constituting
24 property taxes under section 4 of this act for a part of the taxable
25 year, shall be allowed a deduction for the taxpayer's taxable year
26 beginning during 1996 based on 50% of an amount not in excess of
27 \$5,000, the amount of which shall be equal to the sum of the
28 amount of property taxes paid on a homestead that is not a unit of
29 residential rental property and the amount of rent constituting
30 property taxes paid for the occupancy of a homestead that is a unit
31 of residential rental property; **[and]** (2) a taxpayer who is eligible
32 for a deduction for property taxes under section 3 of this act for a
33 part of the taxable year and is also eligible for a deduction for rent
34 constituting property taxes under section 4 of this act for a part of
35 the taxable year, shall be allowed a deduction for the taxpayer's
36 taxable year beginning during 1997 based on 75% of an amount not
37 in excess of \$7,500, the amount of which shall be equal to the sum
38 of the amount of property taxes paid on a homestead that is not a
39 unit of residential rental property and the amount of rent
40 constituting property taxes paid for the occupancy of a homestead
41 that is a unit of residential rental property; and (3) a taxpayer who is
42 eligible for a deduction for property taxes under section 3 of this act
43 for a part of the 2017 taxable year and is also eligible for a
44 deduction for rent constituting property taxes under section 4 of this
45 act for a part of the 2017 taxable year, shall be allowed a deduction
46 for the taxpayer's taxable year beginning during 2017 based on the
47 amount equal to the sum of the amount of property taxes paid on a
48 homestead that is not a unit of residential rental property paid for

1 the calendar year in which the property taxes are due and payable,
2 and paid in advance in the 2017 calendar year for the 2018 calendar
3 year in which the taxes are due and payable, and the amount of rent
4 constituting property taxes paid for the occupancy of a homestead
5 for a part of the taxable year that is a unit of residential rental
6 property.

7 (cf: P.L.1996, c.60, s.5)

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9 4. (New section) No deduction shall be claimed by a taxpayer
10 pursuant to the "Property Tax Deduction Act," P.L.1996, c.60
11 (C.54A:3A-15 et seq.) for property taxes paid in advance in the
12 2017 calendar year for the 2018 calendar year if the taxpayer
13 requests, after that advance payment is made, that the advance
14 payment be refunded to the taxpayer from the municipality to which
15 the advance payment was made.

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17 5. This act shall take effect immediately and be retroactive to
18 December 22, 2017.

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STATEMENT

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23 This bill will require the State to recognize under the "Property
24 Tax Deduction Act" under the New Jersey gross income tax that
25 advance prepayment of homestead property taxes during 2017 for
26 the 2018 calendar year in which the taxes are due and payable may
27 be claimed for the 2017 taxable year homestead property tax
28 deduction. The New Jersey CPA Society has reported that
29 according to the New Jersey Division of Taxation, "residents can
30 claim a deduction or credit on their New Jersey income tax returns
31 for the property taxes they have paid. However, they can take the
32 deduction or credit only in the year in which the property taxes
33 were due. Taxpayers cannot take deductions or credits for 2018
34 property tax pre-payments on their 2017 New Jersey Income Tax
35 returns (NJ-1040). They must wait until they file their 2018
36 returns." This bill will reverse this policy.

37

38 Many New Jersey homestead property taxpayers responded to
39 the capping of the federal itemized deduction for State and local
40 taxes starting in 2018 under the federal "Tax Cuts and Jobs Act"
41 enacted on December 22, 2017, by making these local property tax
42 pre-payments. Some tax advisors and elected officials encouraged
43 these pre-payments as a way to make the last uncapped itemized
44 deduction under the federal income tax for 2017 for State and local
45 taxes that can often exceed the new federal cap of \$10,000 that
46 starts in 2018.

46

47 This bill will allow these pre-payments, motivated by the
48 targeted tax changes that unfairly, directly impact many New Jersey
federal income taxpayers under the "Tax Cuts and Jobs Act," to be

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1 allowed for 2017 New Jersey gross income tax deductions. The bill
2 will also double the maximum New Jersey homestead property tax
3 deduction from \$10,000 to \$20,000 for the 2017 taxable year to
4 cover many of the 2018 pre-payments that were made at the end of
5 calendar year 2017. The pre-payments cannot be claimed as part of
6 a 2017 taxable year deduction if the taxpayer requests a refund of
7 the pre-payment from the municipality to which the pre-payment
8 was made.