

ASSEMBLY, No. 1497

STATE OF NEW JERSEY

INTRODUCED FEBRUARY 8, 1996

By Assemblymen ASSELTA and GIBSON

1 AN ACT concerning certain exclusion from gross income, amending
2 N.J.S.54A:5-1 and supplementing chapter 6 of Title 54A of the
3 New Jersey Statutes.

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

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8 1. N.J.S.54A:5-1 is amended to read as follows:

9 54A:5-1. New Jersey Gross Income Defined. New Jersey gross
10 income shall consist of the following categories of income:

11 a. Salaries, wages, tips, fees, commissions, bonuses, and other
12 remuneration received for services rendered whether in cash or in
13 property.

14 b. Net profits from business. The net income from the operation
15 of a business, profession or other activity after provision for all costs
16 and expenses incurred in the conduct thereof, determined either on a
17 cash or accrual basis in accordance with the method of accounting
18 allowed for federal income tax purposes but without deduction of the
19 amount of:

20 (1) taxes based on income;

21 (2) a civil, civil administrative, or criminal penalty or fine, including
22 a penalty or fine under an administrative consent order, assessed and
23 collected for a violation of a State or federal environmental law, an
24 administrative consent order, or an environmental ordinance or
25 resolution of a local governmental entity, and any interest earned on
26 the penalty or fine, and any economic benefits having accrued to the
27 violator as a result of a violation, which benefits are assessed and
28 recovered in a civil, civil administrative, or criminal action, or pursuant
29 to an administrative consent order. The provisions of this paragraph
30 shall not apply to a penalty or fine assessed or collected for a violation
31 of a State or federal environmental law, or local environmental
32 ordinance or resolution, if the penalty or fine was for a violation that
33 resulted from fire, riot, sabotage, flood, storm event, natural cause, or
34 other act of God beyond the reasonable control of the violator, or

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

Matter underlined thus is new matter.

1 caused by an act or omission of a person who was outside the
2 reasonable control of the violator; and

3 (3) treble damages paid to the Department of Environmental
4 Protection and Energy pursuant to subsection a. of section 7 of
5 P.L.1976, c.141 (C.58:10-23.11f) for costs incurred by the department
6 in removing, or arranging for the removal of, an unauthorized
7 discharge upon the failure of the discharger to comply with a directive
8 from the department to remove, or arrange for the removal of, a
9 discharge.

10 c. Net gains or income from disposition of property. Net gains or
11 net income, less net losses, derived from the sale, exchange or other
12 disposition of property, including real or personal, whether tangible or
13 intangible as determined in accordance with the method of accounting
14 allowed for federal income tax purposes. For the purpose of
15 determining gain or loss, the basis of property shall be the adjusted
16 basis used for federal income tax purposes, except as expressly
17 provided for under this act, but without a deduction for penalties,
18 fines, or economic benefits excepted pursuant to paragraph (2), or for
19 treble damages excepted pursuant to paragraph (3) of subsection b. of
20 this section.

21 A taxpayer's net gain or loss on the sale, exchange or other
22 disposition of a share of an S corporation shall be calculated by
23 increasing the adjusted basis of the share by an amount equal to the
24 shareholder's net losses and deductions in respect of the share allowed
25 and deducted from income for federal income tax purposes, not
26 including any personal net operating loss deductions, to the extent that
27 such net losses were not offset by the taxpayer's pro rata share of S
28 corporation income otherwise subject to taxation pursuant to
29 subsection p. of this section in respect of another S corporation,
30 subject to rules of priority and assignment determined by the director.

31 For the tax year 1976, any taxpayer with a tax liability under this
32 subsection, or under the "Tax on Capital Gains and Other Unearned
33 Income Act," P.L.1975, c.172 (C.54:8B-1 et seq.), shall not be subject
34 to payment of an amount greater than the amount he would have paid
35 if either return had covered all capital transactions during the full tax
36 year 1976; provided, however, that the rate which shall apply to any
37 capital gain shall be that in effect on the date of the transaction. To
38 the extent that any loss is used to offset any gain under P.L.1975,
39 c.172, it shall not be used to offset any gain under the "New Jersey
40 Gross Income Tax Act," N.J.S.54A:1-1 et seq.

41 The term "net gains or income" shall not include gains or income
42 derived from obligations which are referred to in clause (1) or (2) of
43 N.J.S.54A:6-14 of this act or from securities which evidence
44 ownership in a qualified investment fund as defined in section 2 of
45 P.L.1987, c.310 (C.54A:6-14.1). The term "net gains or net income"
46 shall not include gains or income from transactions to the extent to

1 which nonrecognition is allowed for federal income tax purposes. The
2 term "sale, exchange or other disposition" shall not include the
3 exchange of stock or securities in a corporation a party to a
4 reorganization in pursuance of a plan of reorganization, solely for
5 stock or securities in such corporation or in another corporation a
6 party to the reorganization and the transfer of property to a
7 corporation by one or more persons solely in exchange for stock or
8 securities in such corporation if immediately after the exchange such
9 person or persons are in control of the corporation. For purposes of
10 this clause, stock or securities issued for services shall not be
11 considered as issued in return for property.

12 For purposes of this clause, the term "reorganization" means--

13 (i) A statutory merger or consolidation;

14 (ii) The acquisition by one corporation, in exchange solely for all
15 or part of its voting stock (or in exchange solely for all or a part of the
16 voting stock of a corporation which is in control of the acquiring
17 corporation) of stock of another corporation if, immediately after the
18 acquisition, the acquiring corporation has control of such other
19 corporation (whether or not such acquiring corporation had control
20 immediately before the acquisition);

21 (iii) The acquisition by one corporation, in exchange solely for all
22 or part of its voting stock (or in exchange solely for all or a part of the
23 voting stock of a corporation which is in control of the acquiring
24 corporation), of substantially all of the properties of another
25 corporation, but in determining whether the exchange is solely for
26 stock the assumption by the acquiring corporation of a liability of the
27 other, or the fact that property acquired is subject to a liability, shall
28 be disregarded;

29 (iv) A transfer by a corporation of all or a part of its assets to
30 another corporation if immediately after the transfer the transferor, or
31 one or more of its shareholders (including persons who were
32 shareholders immediately before the transfer), or any combination
33 thereof, is in control of the corporation to which the assets are
34 transferred;

35 (v) A recapitalization;

36 (vi) A mere change in identity, form, or place of organization
37 however effected; or

38 (vii) The acquisition by one corporation, in exchange for stock of
39 a corporation (referred to in this subclause as "controlling
40 corporation") which is in control of the acquiring corporation, of
41 substantially all of the properties of another corporation which in the
42 transaction is merged into the acquiring corporation shall not
43 disqualify a transaction under subclause (i) if such transaction would
44 have qualified under subclause (i) if the merger had been into the
45 controlling corporation, and no stock of the acquiring corporation is
46 used in the transaction;

1 (viii) A transaction otherwise qualifying under subclause (i) shall
2 not be disqualified by reason of the fact that stock of a corporation
3 (referred to in this subclause as the "controlling corporation") which
4 before the merger was in control of the merged corporation is used in
5 the transaction, if after the transaction, the corporation surviving the
6 merger holds substantially all of its properties and of the properties of
7 the merged corporation (other than stock of the controlling
8 corporation distributed in the transaction); and in the transaction,
9 former shareholders of the surviving corporation exchanged, for an
10 amount of voting stock of the controlling corporation, an amount of
11 stock in the surviving corporation which constitutes control of such
12 corporation.

13 For purposes of this clause, the term "control" means the ownership
14 of stock possessing at least 80% of the total combined voting power
15 of all classes of stock entitled to vote and at least 80% of the total
16 number of shares of all other classes of stock of the corporation.

17 For purposes of this clause, the term "a party to a reorganization"
18 includes a corporation resulting from a reorganization, and both
19 corporations, in the case of a reorganization resulting from the
20 acquisition by one corporation of stock or properties of another. In
21 the case of a reorganization qualifying under subclause (i) by reason
22 of subclause (vii) the term "a party to a reorganization" includes the
23 controlling corporation referred to in such subclause (vii).

24 Notwithstanding any provisions hereof, upon every such exchange
25 or conversion, the taxpayer's basis for the stock or securities received
26 shall be the same as the taxpayer's actual or attributed basis for the
27 stock, securities or property surrendered in exchange therefor.

28 d. Net gains or net income derived from or in the form of rents,
29 royalties, patents, and copyrights.

30 e. Interest, except interest referred to in clause (1) or (2) of
31 N.J.S.54A:6-14, or distributions paid by a qualified investment fund
32 as defined in section 2 of P.L.1987, c.310 (C.54A:6-14.1), to the
33 extent provided in that section.

34 f. Dividends. "Dividends" means any distribution in cash or
35 property made by a corporation, association or business trust that is
36 not an S corporation, (1) out of accumulated earnings and profits, or
37 (2) out of earnings and profits of the year in which such dividend is
38 paid and any distribution in cash or property made by an S
39 corporation, as specifically determined pursuant to section 16 of
40 P.L.1993, c.173 (C.54A:5-14).

41 The term "dividends" shall not include distributions paid by a
42 qualified investment fund as defined in section 2 of P.L.1987, c.310
43 (C.54A:6-14.1), to the extent provided in that section.

44 g. Gambling winnings.

45 h. Net gains or income derived through estates or trusts.

46 i. Income in respect of a decedent.

1 j. Amounts distributed or withdrawn from an employee trust
2 attributable to contributions to the trust which were excluded from
3 gross income under the provisions of chapter 6 of Title 54A of the
4 New Jersey Statutes amounts paid or otherwise made available to the
5 taxpayer participant or other beneficiary under an eligible deferred
6 compensation plan which are includible in the employees' gross income
7 for federal income tax purposes under section 457 (a) of the federal
8 Internal Revenue Code of 1986, 26 U.S.C. §457, and pensions and
9 annuities except to the extent of exclusions in N.J.S.54A:6-10
10 hereunder, notwithstanding the provisions of N.J.S.18A:66-51,
11 P.L.1973, c.140, s.41 (C.43:6A-41), P.L.1954, c.84, s.53
12 (C.43:15A-53), P.L.1944, c.255, s.17 (C.43:16A-17), P.L.1965, c.89,
13 s.45 (C.53:5A-45), R.S.43:10-14, P.L.1943, c.160, s.22
14 (C.43:10-18.22), P.L.1948, c.310, s.22 (C.43:10-18.71), P.L.1954,
15 c.218, s.32 (C.43:13-22.34), P.L.1964, c.275, s.11 (C.43:13-22.60),
16 R.S.43:10-57, P.L.1938, c.330, s.13 (C.43:10-105), R.S.43:13-44, and
17 P.L.1943, c.189, s.5 (C.43:13-37.5).

18 k. Distributive share of partnership income.

19 l. Amounts received as prizes and awards, except as provided in
20 54A:6-8 and 54A:6-11 hereunder.

21 m. Rental value of a residence furnished by an employer or a rental
22 allowance paid by an employer to provide a home.

23 n. Alimony and separate maintenance payments to the extent that
24 such payments are required to be made under a decree of divorce or
25 separate maintenance but not including payments for support of minor
26 children.

27 o. Income, gain or profit derived from acts or omissions defined as
28 crimes or offenses under the laws of this State or any other
29 jurisdiction.

30 p. Net pro rata share of S corporation income.

31 (cf: P.L.1993, c.173, s.9)

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33 2. (New section) Gross income of an employee shall not include
34 amounts deferred under an eligible deferred compensation plan if
35 those amounts are eligible to be excluded from the federal gross
36 income of the employee for the federal taxable year under the
37 provisions of section 457 of the federal Internal Revenue Code of
38 1986, 26 U.S.C. § 457.

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40 3. This act shall take effect immediately and apply to taxable years
41 beginning on or after its effective date.

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STATEMENT

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45 This bill excludes from gross income subject to taxation under the
46 gross income tax the payments that employers and employees of state

1 and local governments and tax exempt organizations make toward an
2 eligible deferred compensation plan for employees, and includes the
3 value of the payments of the deferred compensation plans at the time
4 the distributions from the plans are made available to the employees.

5 New Jersey law recognizes §457 deferred compensation plans to
6 the extent of authorizing State, local government and authority
7 employers to make salary reduction agreements with their employees.
8 The law does not, however, currently provide for the exclusion of
9 §457 deferred compensation plan contributions from the State gross
10 income tax as the federal income tax does.

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15 Excludes certain deferred compensation plan contributions from gross
16 income under the gross income tax.