

SENATE, No. 311

STATE OF NEW JERSEY

Introduced Pending Technical Review by Legislative Counsel

PRE-FILED FOR INTRODUCTION IN THE 1996 SESSION

By Senator SCOTT

1 AN ACT providing a deduction under the gross income tax for  
2 property taxes paid by homeowners and tenants and providing for  
3 a refund of a portion of certain property taxes paid by persons not  
4 subject to the gross income tax, supplementing Title 54A of the  
5 New Jersey Statutes.

6

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

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10 1. This act shall be known and may be cited as the "Homeowners'  
11 and Tenants' Property Tax Relief Act."

12

13 2. As used in this act:

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

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

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

30 "Director" means the Director of the Division of Taxation in the  
31 Department of the Treasury.

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

1 mutual housing corporation.

2 "Homestead" means:

3 a. a dwelling house and the land on which that dwelling house is  
4 located which constitutes the place of the claimant's domicile and is  
5 owned and used by the claimant as the claimant's principal residence;

6 b. a dwelling house situated on land owned by a person other than  
7 the claimant which constitutes the place of the claimant's domicile and  
8 is owned and used by the claimant as the claimant's principal residence;

9 c. a condominium unit or a unit in a horizontal property regime or  
10 a continuing care retirement community which constitutes the place of  
11 the claimant's domicile and is owned and used by the claimant as the  
12 claimant's principal residence.

13 In addition to the generally accepted meaning of owned or  
14 ownership, a homestead shall be deemed to be owned by a person if  
15 that person is a tenant for life or a tenant under a lease for 99 years or  
16 more, is entitled to and actually takes possession of the homestead  
17 under an executory contract for the sale thereof or under an agreement  
18 with a lending institution which holds title as security for a loan, or is  
19 a resident of a continuing care retirement community pursuant to a  
20 contract for continuing care for the life of that person which requires  
21 the resident to bear, separately from any other charges, the  
22 proportionate share of property taxes attributable to the unit that the  
23 resident occupies;

24 d. a unit in a cooperative or mutual housing corporation which  
25 constitutes the place of domicile of a residential shareholder or lessee  
26 therein, or of a lessee or shareholder who is not a residential  
27 shareholder therein, which is used by the claimant as the claimant's  
28 principal residence; and

29 e. a unit of residential rental property, which unit constitutes the  
30 place of the claimant's domicile and is used by the claimant as the  
31 claimant's principal residence.

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

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

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

45 "Rent constituting property taxes" means 18% of the rent paid by  
46 the claimant for occupancy during the taxable year of a unit of

1 residential rental property which the claimant occupies as a principal  
2 residence.

3 "Residential rental property" means:

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

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

9 c. any building or structure or complex of buildings or structures  
10 constructed under the following sections of the National Housing Act  
11 (Pub.L.73-479) as amended and supplemented: section 202, Housing  
12 Act of 1959 (Pub.L.86-372) and as subsequently amended, section  
13 231, Housing Act of 1959.

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

21

22 3. a. Each 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 taxable income for property taxes paid on the taxpayer's homestead.

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

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

42 d. If title to a homestead is held by a husband and wife who own  
43 the homestead as tenants by the entirety, or if that husband and wife  
44 are both residential shareholders of a cooperative or mutual housing  
45 corporation and occupy the same homestead therein, and who elect to  
46 file separate income tax returns pursuant to the "New Jersey Gross

1 Income Tax Act," N.J.S.54A:1-1 et seq., that husband and wife shall  
2 each be entitled to one-half of the deduction for property taxes for  
3 which they may be jointly eligible pursuant to this section.

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

9

10 4. a. Each resident taxpayer whose homestead is a unit of  
11 residential rental property shall be allowed a deduction from taxable  
12 income for that portion of the rent constituting property taxes paid for  
13 occupancy of that homestead.

14 b. A husband and wife who elect to file separate income tax returns  
15 pursuant to the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1  
16 et seq., shall each be entitled to one-half of the property tax deduction  
17 allowed pursuant to this section.

18 c. If more than one taxpayer, other than husband and wife, qualify  
19 to deduct rent constituting property taxes by reason of their having  
20 occupied the same rented homestead, it shall be presumed that the  
21 deduction shall be equally divided. A taxpayer may, however, deduct  
22 an amount for rent constituting property taxes in the same proportion  
23 that the rent paid by that taxpayer bears to the total rent paid by all  
24 tenants of the same unit.

25

26 5. If a taxpayer who is eligible for a deduction for property taxes  
27 under section 3 of this act has also had as a homestead a residential  
28 rental property for any part of the tax year, the amount of the total  
29 property tax deduction the taxpayer shall be allowed shall be the sum  
30 of the actual amount of property taxes paid on a homestead that is not  
31 a unit of residential rental property and the amount of rent constituting  
32 property taxes paid for the occupancy of a homestead that is a unit of  
33 residential rental property.

34

35 6. If the deduction for property taxes or rent constituting property  
36 taxes allowed under section 3 or 4 of this act reduces taxable income  
37 below zero, then the amount by which the deduction reduces taxable  
38 income below zero shall be considered an overpayment of tax and a  
39 refund on that amount shall be calculated by applying the tax rate for  
40 taxable income of \$20,000 or less as provided in subsection a. or b. of  
41 N.J.S.54A:2-1 to the amount of overpayment. The result of that  
42 calculation shall constitute the amount of the refund which shall be  
43 paid as in the case of other refunds under the "New Jersey Gross  
44 Income Tax Act," N.J.S.54A:1-1 et seq.

1       7. a. A citizen and resident of this State who has paid property  
2 taxes or whose homestead is a unit of residential rental property and  
3 who is required to file a return under the "New Jersey Gross Income  
4 Tax Act," N.J.S.54A:1-1 et seq., who has claimed a credit for income  
5 taxes paid to other states and political subdivisions thereof pursuant  
6 to N.J.S.54A:4-1, shall be entitled to claim either a homestead tax  
7 refund as provided in section 8 of this act or a deduction for property  
8 taxes or rent constituting property taxes under section 3 or 4 of this  
9 act.

10       b. The amount of the homestead tax refund allowed in subsection  
11 a. of this section may be applied as a credit against any tax liability  
12 otherwise due pursuant to N.J.S.54A:1-1 et seq., and any amount  
13 remaining shall be considered an overpayment of the tax and shall be  
14 refunded in the same manner as any other refund under the "New  
15 Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq.

16

17       8. a. Any citizen and resident of this State who has paid property  
18 taxes on a homestead or whose homestead is a unit of residential rental  
19 property but who is not required to file a return under the "New Jersey  
20 Gross Income Tax Act," N.J.S.54A:1-1 et seq., shall be entitled to  
21 claim a homestead tax refund as provided in this section.

22       b. The amount of the homestead tax refund shall be calculated by  
23 applying the tax rate for taxable income of \$20,000 or less as provided  
24 in subsection a. or b. of N.J.S.54A:2-1 to the amount of property taxes  
25 actually paid by the claimant on a homestead or the amount of rent  
26 constituting property taxes paid by the claimant or the sum of both  
27 amounts in the case of a claimant who has had as a homestead for part  
28 of a tax year a unit of residential rental property and a homestead that  
29 is not a unit of residential rental property for another part of the tax  
30 year.

31       c. No homestead tax refund shall be allowed under this section  
32 except upon written application therefor to the Director of the  
33 Division of Taxation in a form prescribed by the director. The director  
34 may require proof and evidence of payment of property taxes or rent  
35 constituting property taxes as the director determines to be necessary.

36       d. A homestead tax refund for property taxes shall be allowed  
37 pursuant to this section in relation to the amount of the property taxes  
38 actually paid by or allocable to an individual who is a qualified  
39 claimant on more than one homestead, but the aggregate amount of  
40 the property taxes claimed shall not exceed the total of the  
41 proportionate amounts of property taxes assessed and levied against  
42 or allocable to each homestead for the portion of the tax year for  
43 which the claimant occupied it as the claimant's principal residence.

44       e. If title to a homestead is held by more than one individual as  
45 joint tenants or tenants in common, each individual shall be allowed a  
46 homestead tax refund pursuant to this section only in relation to the

1 individual's proportionate share of the property taxes assessed and  
2 levied against the homestead. The proportionate share shall be equal  
3 to that of all other individuals who hold the title, but if the conveyance  
4 under which the title is held provides for unequal interests therein, a  
5 claimant's share of the property taxes shall be in proportion to that  
6 claimant's interest in the title.

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

12 g. A husband and wife shall each be entitled to one-half of the  
13 homestead tax refund allowed pursuant to this section.

14 h. If more than one taxpayer, other than husband and wife, qualify  
15 to deduct rent constituting property taxes by reason of their having  
16 occupied the same rented homestead, it shall be presumed that the  
17 homestead tax refund shall be equally divided. A claimant may,  
18 however, apply for a homestead tax refund for rent constituting  
19 property taxes in the same proportion that the rent paid by that  
20 claimant bears to the total rent paid by all tenants of the same unit.

21  
22 9. An application for a homestead tax refund under section 8 of  
23 this act shall be made on or before April 15 for property taxes paid or  
24 rent constituting property taxes for the immediately preceding calendar  
25 year.

26  
27 10. The homestead tax refund allowed under section 8 of this act  
28 shall be considered an overpayment of tax under the "New Jersey  
29 Gross Income Tax Act," N.J.S.54A:1-1 et seq., and shall be paid as in  
30 the case of refunds under that act.

31  
32 11. a. No application for a homestead tax refund under section 8  
33 of this act shall be approved if a deduction for actual property taxes or  
34 rent constituting property taxes has been taken pursuant to section 3  
35 or 4 of this act.

36 b. No homestead tax refund allowed in section 8 shall be paid  
37 except upon approval by the director of a written application required  
38 under subsection c. of section 8 of this act.

39  
40 12. a. The director shall provide a supplemental form to be filed  
41 as a part of the form of return required under the "New Jersey Gross  
42 Income Tax Act," N.J.S.54A:1-1 et seq., and shall not provide for a  
43 separate application for any deduction or refund under section 3, 4 or  
44 7 of this act.

45 b. The application for a homestead tax refund pursuant to section  
46 8 of this act shall be in similar form to that prescribed in subsection a.

1 of this section and shall be filed on or before April 15; provided  
2 however, that the applicant shall not be required to file the form of  
3 return under the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1  
4 et seq., as a part of the application.

5  
6 13. Any homestead tax deduction allowed under section 3 or 4 and  
7 refundable under section 6, or any homestead tax refund allowed under  
8 section 7 or 8, shall be paid as in the case of other refunds under the  
9 "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., and shall  
10 be added to any other refunds otherwise due and a single payment  
11 made to the taxpayer or claimant.

12  
13 14. The director shall promulgate rules and regulations in  
14 accordance with the "Administrative Procedure Act," P.L.1968, c.410  
15 (C.52:14B-1 et seq.) as the director deems necessary to administer the  
16 provisions of this act.

17  
18 15. This act shall take effect immediately and shall first be  
19 applicable with respect to property taxes or rent constituting property  
20 taxes paid for the tax year 1993.

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22  
23 STATEMENT  
24

25 This bill will enable eligible resident taxpayers under the "New  
26 Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., to claim a  
27 deduction against their taxable income equal to property taxes which  
28 they paid as homeowners, or the rental equivalent thereof paid as  
29 tenants. State residents who are not required to file a gross income  
30 tax return may file a separate application for a homestead tax refund  
31 as prescribed in the bill.

32 In effect, this bill reinstates the major provisions of the former  
33 "Homestead Tax Relief Act," P.L.1985, c.304 (C.54A:3A-1 et seq.),  
34 without the requirement of minimum benefits. That law was repealed  
35 on July 12, 1990 by enactment of P.L.1990, c.61, which significantly  
36 revised the gross income tax and the State's homestead property tax  
37 relief programs.

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42 "Homeowners' and Tenants' Property Tax Relief Act;" providing for  
43 deductions or credits under the gross income tax.