

SENATE, No. 1735

STATE OF NEW JERSEY

INTRODUCED DECEMBER 19, 1996

By Senators CIESLA and INVERSO

1 AN ACT concerning the gross income tax treatment of the gain or loss
2 on the sale, exchange or other disposition of partnership interests,
3 amending N.J.S.54A:5-1.

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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 A taxpayer's net gain or loss on the sale, exchange or other
32 disposition of a partnership interest shall be calculated by increasing
33 the adjusted basis for federal income tax purposes by an amount equal
34 to the partnership's net losses and deductions in respect of the
35 partner's share allowed and deducted from income for federal income
36 tax purposes, not including any personal net operating loss deductions,
37 to the extent that such net losses were not offset by the taxpayer's
38 distributive share of income otherwise subject to taxation pursuant to
39 subsection k. of this section in respect of another partnership, subject
40 to rules of priority and assignment determined by the director.

41 For the tax year 1976, any taxpayer with a tax liability under this
42 subsection, or under the "Tax on Capital Gains and Other Unearned
43 Income Act," P.L.1975, c.172 (C.54:8B-1 et seq.), shall not be subject
44 to payment of an amount greater than the amount he would have paid
45 if either return had covered all capital transactions during the full tax
46 year 1976; provided, however, that the rate which shall apply to any

1 capital gain shall be that in effect on the date of the transaction. To
2 the extent that any loss is used to offset any gain under P.L.1975,
3 c.172, it shall not be used to offset any gain under the "New Jersey
4 Gross Income Tax Act," N.J.S.54A:1-1 et seq.

5 The term "net gains or income" shall not include gains or income
6 derived from obligations which are referred to in clause (1) or (2) of
7 N.J.S.54A:6-14 of this act or from securities which evidence
8 ownership in a qualified investment fund as defined in section 2 of
9 P.L.1987, c.310 (C.54A:6-14.1). The term "net gains or net income"
10 shall not include gains or income from transactions to the extent to
11 which nonrecognition is allowed for federal income tax purposes. The
12 term "sale, exchange or other disposition" shall not include the
13 exchange of stock or securities in a corporation a party to a
14 reorganization in pursuance of a plan of reorganization, solely for
15 stock or securities in such corporation or in another corporation a
16 party to the reorganization and the transfer of property to a
17 corporation by one or more persons solely in exchange for stock or
18 securities in such corporation if immediately after the exchange such
19 person or persons are in control of the corporation. For purposes of
20 this clause, stock or securities issued for services shall not be
21 considered as issued in return for property.

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

23 (i) A statutory merger or consolidation;

24 (ii) The acquisition by one corporation, in exchange solely for all
25 or part of its voting stock (or in exchange solely for all or a part of the
26 voting stock of a corporation which is in control of the acquiring
27 corporation) of stock of another corporation if, immediately after the
28 acquisition, the acquiring corporation has control of such other
29 corporation (whether or not such acquiring corporation had control
30 immediately before the acquisition);

31 (iii) The acquisition by one corporation, in exchange solely for all
32 or part of its voting stock (or in exchange solely for all or a part of the
33 voting stock of a corporation which is in control of the acquiring
34 corporation), of substantially all of the properties of another
35 corporation, but in determining whether the exchange is solely for
36 stock the assumption by the acquiring corporation of a liability of the
37 other, or the fact that property acquired is subject to a liability, shall
38 be disregarded;

39 (iv) A transfer by a corporation of all or a part of its assets to
40 another corporation if immediately after the transfer the transferor, or
41 one or more of its shareholders (including persons who were
42 shareholders immediately before the transfer), or any combination
43 thereof, is in control of the corporation to which the assets are
44 transferred;

45 (v) A recapitalization;

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

3 (vii) The acquisition by one corporation, in exchange for stock of
4 a corporation (referred to in this subclause as "controlling
5 corporation") which is in control of the acquiring corporation, of
6 substantially all of the properties of another corporation which in the
7 transaction is merged into the acquiring corporation shall not
8 disqualify a transaction under subclause (i) if such transaction would
9 have qualified under subclause (i) if the merger had been into the
10 controlling corporation, and no stock of the acquiring corporation is
11 used in the transaction;

12 (viii) A transaction otherwise qualifying under subclause (i) shall
13 not be disqualified by reason of the fact that stock of a corporation
14 (referred to in this subclause as the "controlling corporation") which
15 before the merger was in control of the merged corporation is used in
16 the transaction, if after the transaction, the corporation surviving the
17 merger holds substantially all of its properties and of the properties of
18 the merged corporation (other than stock of the controlling
19 corporation distributed in the transaction); and in the transaction,
20 former shareholders of the surviving corporation exchanged, for an
21 amount of voting stock of the controlling corporation, an amount of
22 stock in the surviving corporation which constitutes control of such
23 corporation.

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

28 For purposes of this clause, the term "a party to a reorganization"
29 includes a corporation resulting from a reorganization, and both
30 corporations, in the case of a reorganization resulting from the
31 acquisition by one corporation of stock or properties of another. In
32 the case of a reorganization qualifying under subclause (i) by reason
33 of subclause (vii) the term "a party to a reorganization" includes the
34 controlling corporation referred to in such subclause (vii).

35 Notwithstanding any provisions hereof, upon every such exchange
36 or conversion, the taxpayer's basis for the stock or securities received
37 shall be the same as the taxpayer's actual or attributed basis for the
38 stock, securities or property surrendered in exchange therefor.

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

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

45 f. Dividends. "Dividends" means any distribution in cash or
46 property made by a corporation, association or business trust that is

1 not an S corporation, (1) out of accumulated earnings and profits, or
2 (2) out of earnings and profits of the year in which such dividend is
3 paid and any distribution in cash or property made by an S
4 corporation, as specifically determined pursuant to section 16 of
5 P.L.1993, c.173 (C.54A:5-14).

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

9 g. Gambling winnings.

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

11 i. Income in respect of a decedent.

12 j. Amounts distributed or withdrawn from an employee trust
13 attributable to contributions to the trust which were excluded from
14 gross income under the provisions of chapter 6 of Title 54A of the
15 New Jersey Statutes and pensions and annuities except to the extent
16 of exclusions in N.J.S.54A:6-10 hereunder, notwithstanding the
17 provisions of N.J.S.18A:66-51, P.L.1973, c.140, s.41 (C.43:6A-41),
18 P.L.1954, c.84, s.53 (C.43:15A-53), P.L.1944, c.255, s.17
19 (C.43:16A-17), P.L.1965, c.89, s.45 (C.53:5A-45), R.S.43:10-14,
20 P.L.1943, c.160, s.22 (C.43:10-18.22), P.L.1948, c.310, s.22
21 (C.43:10-18.71), P.L.1954, c.218, s.32 (C.43:13-22.34), P.L.1964,
22 c.275, s.11 (C.43:13-22.60), R.S.43:10-57, P.L.1938, c.330, s.13
23 (C.43:10-105), R.S.43:13-44, and P.L.1943, c.189, s.5
24 (C.43:13-37.5).

25 k. Distributive share of partnership income.

26 l. Amounts received as prizes and awards, except as provided in
27 N.J.S.54A:6-8 and N.J.S.54A:6-11 hereunder.

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

30 n. Alimony and separate maintenance payments to the extent that
31 such payments are required to be made under a decree of divorce or
32 separate maintenance but not including payments for support of minor
33 children.

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

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

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

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

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STATEMENT

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45 This bill establishes a New Jersey basis for partnership interests that
46 a partner may use for the calculation of the net gain or loss for gross

1 income tax purposes. Currently, the gross income tax statute requires
2 a partner to use the adjusted basis applicable for federal income tax
3 purposes to determine gain or loss. Under this bill, the basis for
4 determining gain or loss for New Jersey gross income tax purposes
5 will be the adjusted federal basis increased by an amount, within
6 certain limitations, equal to the partner's net losses and deductions
7 allowed and deducted from income for federal income tax purposes
8 within certain limitations.

9 By this means, a partner who was not able to use his or her share
10 of net losses from a partnership for New Jersey gross income tax
11 purposes due to certain provisions of the gross income statute would
12 be able to use those net losses to calculate the basis of a partnership
13 interest for gross income tax purposes.

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18 Provides New Jersey basis for calculation of gross income tax on gain
19 or loss from sale, exchange or other disposition of partnership
20 interests.