

ASSEMBLY, No. 504

STATE OF NEW JERSEY

219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

Sponsored by:
Assemblyman JAY WEBBER
District 26 (Essex, Morris and Passaic)

SYNOPSIS

Consolidates all categories of gross income for cross-claiming of net losses and allows 20 year loss carryforward under the New Jersey gross income tax; repeals alternate business income calculation.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



1 **AN ACT** consolidating all categories of gross income for claiming
 2 of losses and allowing a 20 year net loss carry forward under the
 3 New Jersey gross income tax, amending N.J.S.54A:5-2 and
 4 repealing P.L.2011, c.60.

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

8
 9 1. N.J.S.54A:5-2 is amended to read as follows:
 10 54A:5-2. Losses. a. Losses which occur within one category
 11 of gross income may be applied against other sources of gross
 12 income within **the same** another category of gross income during
 13 the taxable year **the same** However, and a net loss in one category of
 14 gross income may **not** be applied against gross income in another
 15 category of gross income.

16 b. A taxpayer who sustains a net loss in a category of gross
 17 income set forth in N.J.S.54A:5-1, after applying that net loss
 18 against the other categories of gross income, may carry that loss
 19 forward, if necessary and in accordance with the terms and
 20 conditions prescribed by the director, for application as a deduction
 21 from gross income for each of the 20 taxable years following the
 22 taxable year in which the net loss occurs.
 23 (cf: N.J.S.54A:5-2)

24
 25 2. P.L.2011, c.60 (C.54A:3-9) is repealed.
 26
 27 3. This act shall take effect immediately and shall apply to
 28 taxable years beginning on or after January 1, 2018.
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30
 31 **STATEMENT**
 32

33 The bill provides for the consolidation of all categories of
 34 income defined under the New Jersey gross income tax to allow
 35 taxpayers who generate income from different types of categories of
 36 income to offset gains from one type of income with losses from
 37 another, and permits net losses from the consolidated categories to
 38 be carried forward for a period of up to 20 taxable years.

39 As a result of the bill, for example, a taxpayer who generates a
 40 profit from ownership interest in a limited liability company may
 41 offset that gain with losses sustained as a sole proprietor, losses
 42 sustained from the sale of a patent or copyright, or losses sustained
 43 from an investment in a Subchapter S corporation, and if a net loss
 44 is unused, may carry it forward to deduct in future years.

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 Under current law, the “cross-netting” of gains or losses from
2 one category of income to another and the “carry forward” of losses
3 from one year to the next is prohibited, except for a limited cross-
4 netting recently allowed for four categories of business-related
5 income. Other than this limited consolidation, a loss may be used
6 to offset a gain only if that loss and that gain fall within the same
7 category of income, and a loss which occurs in one taxable year
8 may not be carried back or forward and applied against past or
9 future tax liabilities.

10 The inability to carry net losses from one year to the next along
11 with the inability to cross-net gains or losses from one category to
12 another, is unique to the State’s approach to imposing tax on
13 income. New Jersey, unlike the federal government and states that
14 base their tax on income on the federal definition of taxable income,
15 impose tax on “gross income.”

16 New Jersey’s gross income tax has 16 separately defined
17 categories of income. Each of these categories is a separate total,
18 and for some, but not all, of the categories the costs and expenses of
19 making that particular kind of income can be subtracted from that
20 specific kind of income to calculate each of 16 small sums. New
21 Jersey’s gross income is the total of those 16 sums, but the key
22 difference between New Jersey taxable income and federal taxable
23 income is that if for one of the 16 separate categories of income the
24 “sum” is negative, or a loss, that loss is disregarded in calculating
25 total New Jersey taxable income.

26 When the gross income tax was adopted in 1976, this approach
27 to imposing tax on income was aimed at simplification. The law set
28 aside the complex deductions, exclusions, carryforwards,
29 carrybacks, phaseouts, credits, special allowances of the federal
30 income tax, and required that 14 specific categories would be added
31 up, a rate would be applied, and a calculation would be completed.

32 Since then, new forms of structuring businesses and investments
33 have emerged, and more taxpayers have invested in more types of
34 more diverse businesses entities and investment options. What was
35 simple and straightforward has become inflexible and has served as
36 a deterrent for growth and development. In creating a consolidated
37 category of income, this bill removes the deterrent, and allows New
38 Jersey’s gross income tax to keep pace with changes in the current
39 marketplace.

40 The bill also repeals the recently enacted, and more limited,
41 partial "cross-netting" of gains and losses from four of the gross
42 income tax’s 16 separately defined categories of income
43 consolidated into a single category of business-related income.
44 This bill obviates the need for the more limited consolidated
45 categories and net loss carryforward.