

ASSEMBLY, No. 1437

STATE OF NEW JERSEY 219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

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SYNOPSIS

Excludes under gross income tax certain contributions to qualified pension plans, deferred compensation plans and provides deduction for certain individual retirement savings.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



(Sponsorship Updated As Of: 2/25/2020)

1 AN ACT excluding certain contributions to qualified pension plans,
2 deferred compensation plans and providing a deduction for
3 certain individual retirement savings under the gross income
4 tax, amending N.J.S.54A:5-1 and P.L.1983, c.571 and
5 supplementing chapter 3 of Title 54A of the New Jersey
6 Statutes.

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

10

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

12 54A:5-1. New Jersey Gross Income Defined. New Jersey gross
13 income shall consist of the following categories of income:

14 a. Salaries, wages, tips, fees, commissions, bonuses, and other
15 remuneration received for services rendered whether in cash or in
16 property, and amounts paid or distributed, or deemed paid or
17 distributed, out of a medical savings account that are not excluded
18 from gross income pursuant to section 5 of P.L.1997, c.414
19 (C.54A:6-27).

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

26 (1) taxes based on income;

27 (2) a civil, civil administrative, or criminal penalty or fine,
28 including a penalty or fine under an administrative consent order,
29 assessed and collected for a violation of a State or federal
30 environmental law, an administrative consent order, or an
31 environmental ordinance or resolution of a local governmental
32 entity, and any interest earned on the penalty or fine, and any
33 economic benefits having accrued to the violator as a result of a
34 violation, which benefits are assessed and recovered in a civil, civil
35 administrative, or criminal action, or pursuant to an administrative
36 consent order. The provisions of this paragraph shall not apply to a
37 penalty or fine assessed or collected for a violation of a State or
38 federal environmental law, or local environmental ordinance or
39 resolution, if the penalty or fine was for a violation that resulted
40 from fire, riot, sabotage, flood, storm event, natural cause, or other
41 act of God beyond the reasonable control of the violator, or caused
42 by an act or omission of a person who was outside the reasonable
43 control of the violator; and

44 (3) treble damages paid to the Department of Environmental
45 Protection pursuant to subsection a. of section 7 of P.L.1976, c.141

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 (C.58:10-23.11f) for costs incurred by the department in removing,
2 or arranging for the removal of, an unauthorized discharge upon the
3 failure of the discharger to comply with a directive from the
4 department to remove, or arrange for the removal of, a discharge.

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

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

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

38 The term "net gains or income" shall not include gains or income
39 derived from obligations which are referred to in clause (1) or (2) of
40 N.J.S.54A:6-14 of this act or from securities which evidence
41 ownership in a qualified investment fund as defined in section 2 of
42 P.L.1987, c.310 (C.54A:6-14.1). The term "net gains or net income"
43 shall not include gains or income from transactions to the extent to
44 which nonrecognition is allowed for federal income tax
45 purposes. The term "sale, exchange or other disposition" shall not
46 include the exchange of stock or securities in a corporation a party

1 to a reorganization in pursuance of a plan of reorganization, solely
2 for stock or securities in such corporation or in another corporation
3 a party to the reorganization and the transfer of property to a
4 corporation by one or more persons solely in exchange for stock or
5 securities in such corporation if immediately after the exchange
6 such person or persons are in control of the corporation. For
7 purposes of this clause, stock or securities issued for services shall
8 not be considered as issued in return for property.

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

10 (i) A statutory merger or consolidation;

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

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

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

32 (v) A recapitalization;

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

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

44 (viii) A transaction otherwise qualifying under subclause (i) shall
45 not be disqualified by reason of the fact that stock of a corporation
46 (referred to in this subclause as the "controlling corporation") which
47 before the merger was in control of the merged corporation is used
48 in the transaction, if after the transaction, the corporation surviving

1 the merger holds substantially all of its properties and of the
2 properties of the merged corporation (other than stock of the
3 controlling corporation distributed in the transaction); and in the
4 transaction, former shareholders of the surviving corporation
5 exchanged, for an amount of voting stock of the controlling
6 corporation, an amount of stock in the surviving corporation which
7 constitutes control of such corporation.

8 For purposes of this clause, the term "control" means the
9 ownership of stock possessing at least 80% of the total combined
10 voting power of all classes of stock entitled to vote and at least 80%
11 of the total number of shares of all other classes of stock of the
12 corporation.

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

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

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

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

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

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

41 g. Gambling winnings.

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

43 i. Income in respect of a decedent.

44 j. Amounts distributed or withdrawn from an employee trust,
45 plan or fund attributable to contributions to the trust, plan or
46 fund which were excluded from gross income under the provisions
47 of chapter 6 of Title 54A of the New Jersey Statutes or that were
48 deducted from gross income under the provisions of section 3 of

1 P.L. _____, c. _____ (C. _____) (pending before the Legislature as this bill),
 2 amounts rolled over from an IRA, as defined pursuant to subsection
 3 (a) of section 408 of the federal Internal Revenue Code of 1986, 26
 4 U.S.C. s.408, that is not a Roth IRA, as defined pursuant to
 5 subsection (b) of section 2 of P.L.1998, c.57 (C.54A:6-28), to an
 6 IRA that is a Roth IRA, and pensions and annuities, except to the
 7 extent of exclusions in N.J.S.54A:6-10 hereunder, notwithstanding
 8 the provisions of N.J.S.18A:66-51, P.L.1973, c.140, s.41 (C.43:6A-
 9 41), P.L.1954, c.84, s.53 (C.43:15A-53), P.L.1944, c.255, s.17
 10 (C.43:16A-17), P.L.1965, c.89, s.45 (C.53:5A-45), R.S.43:10-14,
 11 P.L.1943, c.160, s.22 (C.43:10-18.22), P.L.1948, c.310, s.22
 12 (C.43:10-18.71), P.L.1954, c.218, s.32 (C.43:13-22.34), P.L.1964,
 13 c.275, s.11 (C.43:13-22.60), R.S.43:10-57, P.L.1938, c.330, s.13
 14 (C.43:10-105), R.S.43:13-44, and P.L.1943, c.189, s.5 (C.43:13-
 15 37.5).

16 k. Distributive share of partnership income.

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

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

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

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

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

29 (cf: P.L.1998, c.57, s.1)

30

31 2. Section 2 of P.L.1983, c.571 (C.54A:6-21) is amended to
 32 read as follows:

33 2. Contributions to certain employee trusts, plans and funds.

34 Gross income shall not include amounts contributed:

35 a. by an employer on behalf of and at the election of an
 36 employee to a trust which is part of a qualified cash or deferred
 37 arrangement which meets the requirements of **Section**
 38 **401(k)** subsection (k) of section 401 of the [1954] federal Internal
 39 Revenue Code of 1986 (26 U.S.C. s.401), as amended;

40 b. for a qualified pension plan which meets the requirements
 41 under the provisions of subsection (a) of section 401 of the federal
 42 Internal Revenue Code of 1986 (26 U.S.C. s.401);

43 c. for annuity contracts, or treated as amounts contributed for
 44 annuity contracts, under the provisions of subsection (b) of section
 45 403 of the federal Internal Revenue Code of 1986
 46 (26 U.S.C. s.403);

1 d. to an eligible deferred compensation plan of a state or local
2 government which meets the requirements of section 457 of the
3 federal Internal Revenue Code of 1986 (26 U.S.C. s.457); or,

4 e. to the federal Thrift Savings Fund established pursuant to 5
5 U.S.C. s.8437 if those amounts are excludable from the federal
6 gross income of the employee for the taxable year.
7 (cf: P.L.1983, c.571, s.2)

8
9 3. (New section) A taxpayer shall be allowed a deduction from
10 gross income equal to the taxpayer's contributions or premiums for
11 the taxable year contributed to an individual retirement account, or
12 paid as premiums for the purchase of an individual retirement
13 annuity, which meets the requirements of section 408 of the federal
14 Internal Revenue Code of 1986 (26 U.S.C. s.408), and that are
15 deductible from federal taxable income pursuant to section 219 of
16 the federal Internal Revenue Code of 1986 (26 U.S.C. s.219).

17
18 4. This act shall take effect immediately and apply to taxable
19 years beginning on or after the January 1 immediately following the
20 date of enactment.

21
22
23 STATEMENT

24
25 This bill excludes from gross income taxation the employee and
26 employer contributions that public and private sector employees
27 make to federally qualified tax exempt pension plans under section
28 401(a) of the federal Internal Revenue Code. The bill also excludes
29 from gross income taxation elective contributions that employees of
30 the public and non-profit sectors may make toward their retirement
31 savings, and allows a deduction for federally qualifying IRA
32 contributions.

33 The New Jersey gross income tax currently allows the employees
34 of private, for profit, businesses to make tax-deferred contributions
35 to the retirement savings plans authorized under section 401(k) of
36 the federal Internal Revenue Code. Contributions mandated under
37 most qualified retirement plans are not accorded tax deferral under
38 the New Jersey gross income tax. Also employees of public and
39 nonprofit sectors are not afforded the same access to 401(k) plans
40 as private sector employees that includes the gross income tax
41 contributions tax deferral.

42 This bill incorporates New Jersey gross income tax deferrals for
43 private and public sector employee contributions and for
44 contribution designated as "employer contributions" for federal
45 income tax purposes under qualified retirement plans established
46 under section 401(a) of the federal Internal Revenue Code. This
47 bill also incorporates tax deferrals for the elective deferred
48 compensation systems allowed to employees of governments and

1 nonprofits. Charitable, educational and religious organization
2 employees and public school employees are authorized by federal
3 law to contribute toward their retirement savings under plans
4 established under subsection (b) of section 403 of the federal
5 Internal Revenue Code of 1986. State and local government and
6 authority employers are authorized by federal law to make
7 contributions under plans established under section 457 of the
8 federal Internal Revenue Code, and federal employees are
9 authorized by the federal Internal Revenue Code to make
10 contributions to the federal Thrift Savings Plan.

11 This bill gives the employees of federally tax-exempt charitable,
12 educational or religious organizations; the employees of public
13 school systems; the employees of state and local government and
14 federal employees similar tax incentives for retirement savings that
15 are provided under the New Jersey gross income tax to private
16 sector employees.

17 This bill also allows a gross income tax deduction for
18 contributions to individual retirement accounts, or premiums paid to
19 individual retirement annuities, that qualify for federal income tax
20 deductions. IRA's are a significant retirement savings vehicle for
21 employees whose employers do not offer a pension plan.