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SENATE, No. 823

STATE OF NEW JERSEY

219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

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SYNOPSIS

Provides gross income tax exemption for contributions made to qualified retirement plans.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.

AN ACT providing a gross income tax exemption for contributions made to qualified retirement plans, amending N.J.S.54A:5-1 and P.L.1983, c.571.

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

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

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

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

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

(1) taxes based on income;

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

(3) treble damages paid to the Department of Environmental Protection pursuant to subsection a. of section 7 of P.L.1976, c.141 (C.58:10-23.11f) for costs incurred by the department in removing, or arranging for the removal of, an unauthorized discharge upon the

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 <u>thus</u> is new matter.

failure of the discharger to comply with a directive from the department to remove, or arrange for the removal of, a discharge.

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

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

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

The term "net gains or income" shall not include gains or income derived from obligations which are referred to in clause (1) or (2) of N.J.S.54A:6-14 of this act or from securities which evidence ownership in a qualified investment fund as defined in section 2 of P.L.1987, c.310 (C.54A:6-14.1). The term "net gains or income" shall not include gains or income derived from the sale or assignment of a tax credit transfer certificate pursuant to section 7 of P.L.2011, c.149 (C.34:1B-248) and section 10 of P.L.2014, c.63 (C.34:1B-251) from any sale or assignment of a tax credit issued pursuant to an award of tax credits approved by the New Jersey Economic Development Authority prior to July 1, 2018, regardless of when such sale or assignment occurs. The term "net gains or net income" shall not include gains or income from transactions to the extent to which nonrecognition is allowed for federal income tax purposes. The term "sale, exchange or other disposition" shall not include the

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

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

(i) A statutory merger or consolidation;

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

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

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

(v) A recapitalization;

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

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

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

the transaction, if after the transaction, the corporation surviving the merger holds substantially all of its properties and of the properties of the merged corporation (other than stock of the controlling corporation distributed in the transaction); and in the transaction, former shareholders of the surviving corporation exchanged, for an amount of voting stock of the controlling corporation, an amount of stock in the surviving corporation which constitutes control of such corporation.

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

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

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

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

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

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

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

g. Gambling winnings.

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

i. Income in respect of a decedent.

j. Amounts distributed or withdrawn from an employee trust <u>, plan, account, or fund</u> attributable to contributions to the trust <u>, plan, account, or fund</u> which were excluded from gross income under the provisions of chapter 6 of Title 54A of the New Jersey Statutes,

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

k. Distributive share of partnership income, excluding the gain or income derived from the sale or assignment of a tax credit transfer certificate pursuant to section 7 of P.L.2011, c.149 (C.34:1B-248) and section 10 of P.L.2014, c.63 (C.34:1B-251) from any sale or assignment of a tax credit issued pursuant to an award of tax credits approved by the New Jersey Economic Development Authority prior to July 1, 2018, regardless of when such sale or assignment occurs.

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

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

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

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

p. Net pro rata share of S corporation income, excluding the gain or income derived from the sale or assignment of a tax credit transfer certificate pursuant to section 7 of P.L.2011, c.149 (C.34:1B-248) and section 10 P.L.2014, c.63 (C.34:1B-251) from any sale or assignment of a tax credit issued pursuant to an award of tax credits approved by the New Jersey Economic Development Authority prior to July 1, 2018, regardless of when such sale or assignment occurs.
(P.L.2018, c.131, s.8)

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

Gross income shall not include amounts contributed:

a. by an employer on behalf of and at the election of an employee to a trust which is part of a qualified cash or deferred arrangement which meets the requirements of **[**Section 401(k)**]**

subsection (k) of section 401 of the [1954] federal Internal Revenue Code, 26 U.S.C. s.401, as amended ;

b. to a qualified pension plan which meets the requirements of subsection (a) of section 401 of the federal Internal Revenue Code, 26 U.S.C. s.401;

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

d. to an eligible deferred compensation plan of a state or local government that meets the requirements of section 457 of the federal Internal Revenue Code, 26 U.S.C. s.457;

e. to the federal Thrift Savings Fund established pursuant to 5 U.S.C. s.8437; or

f. for the taxable year to an individual retirement account, or premiums paid for the purchase of an individual retirement annuity which meets the requirements of, section 408 of the federal Internal Revenue Code, 26 U.S.C. s.408, if those amounts are excludable from the federal gross income of the employee for the taxable year.

(cf: P.L.1983, c.571, s.2)

3. This act shall take effect immediately and apply to contributions made or premiums paid in taxable years beginning on and after January 1, 2019.

STATEMENT

This bill provides taxpayers a gross income tax exclusion in the amount of contributions made to a qualified retirement plan.

A "qualified retirement plan" means: (1) a plan established under section 401(a) or section 401(k) of the federal Internal Revenue Code; (2) amounts paid for annuity contracts under section 403(b) of the federal Internal Revenue Code, allowed to employees of governments and nonprofits; (3) a deferred compensation plan established under section 457 of the federal Internal Revenue Code, allowed for state and local government and authority employees; (4) a federal Thrift Savings Plan; and (5) a standard Individual Retirement Account, pursuant to section 408 of the federal Internal Revenue Code. The contributions to these plans are taxed upon distribution from the account.

The bill applies to contributions made and amounts paid on or after January 1, 2019.