

SENATE, No. 1283

STATE OF NEW JERSEY
219th LEGISLATURE

INTRODUCED FEBRUARY 10, 2020

Sponsored by:
Senator SHIRLEY K. TURNER
District 15 (Hunterdon and Mercer)

SYNOPSIS

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

CURRENT VERSION OF TEXT

As introduced.



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

9
10 1. N.J.S.54A:5-1 is amended to read as follows:

11 54A:5-1. New Jersey Gross Income Defined. New Jersey gross
12 income shall consist of the following categories of income:

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

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

25 (1) taxes based on income;

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

43 (3) treble damages paid to the Department of Environmental
44 Protection pursuant to subsection a. of section 7 of P.L.1976, c.141
45 (C.58:10-23.11f) for costs incurred by the department in removing,

**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 or arranging for the removal of, an unauthorized discharge upon the
2 failure of the discharger to comply with a directive from the
3 department to remove, or arrange for the removal of, a discharge.

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

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

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

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

1 income" shall not include gains or income from transactions to the
2 extent to which nonrecognition is allowed for federal income tax
3 purposes. The term "sale, exchange or other disposition" shall not
4 include the exchange of stock or securities in a corporation a party
5 to a reorganization in pursuance of a plan of reorganization, solely
6 for stock or securities in such corporation or in another corporation
7 a party to the reorganization and the transfer of property to a
8 corporation by one or more persons solely in exchange for stock or
9 securities in such corporation if immediately after the exchange
10 such person or persons are in control of the corporation. For
11 purposes of this clause, stock or securities issued for services shall
12 not be considered as issued in return for property.

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

14 (i) A statutory merger or consolidation;

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

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

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

36 (v) A recapitalization;

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

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

1 (viii) A transaction otherwise qualifying under subclause (i)
2 shall not be disqualified by reason of the fact that stock of a
3 corporation (referred to in this subclause as the "controlling
4 corporation") which before the merger was in control of the merged
5 corporation is used in the transaction, if after the transaction, the
6 corporation surviving the merger holds substantially all of its
7 properties and of the properties of the merged corporation (other
8 than stock of the controlling corporation distributed in the
9 transaction); and in the transaction, former shareholders of the
10 surviving corporation exchanged, for an amount of voting stock of
11 the controlling corporation, an amount of stock in the surviving
12 corporation which constitutes control of such corporation.

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

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

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

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

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

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

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

46 g. Gambling winnings.

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

48 i. Income in respect of a decedent.

- 1 j. Amounts distributed or withdrawn from an employee trust,
2 plan or fund attributable to contributions to the trust, plan or fund
3 which were excluded from gross income under the provisions of
4 chapter 6 of Title 54A of the New Jersey Statutes or that were
5 deducted from gross income under the provisions of section 3 of
6 P.L. _____, c. _____ (C. _____) (pending before the Legislature as this bill),
7 amounts rolled over from an IRA, as defined pursuant to subsection
8 (a) of section 408 of the federal Internal Revenue Code of 1986, 26
9 U.S.C. s.408, that is not a Roth IRA, as defined pursuant to
10 subsection b. of section 2 of P.L.1998,c.57 (C.54A:6-28) to an IRA
11 that is a Roth IRA, and pensions and annuities except to the extent
12 of exclusions in N.J.S.54A:6-10 hereunder, notwithstanding the
13 provisions of N.J.S.18A:66-51, P.L.1973, c.140, s.41 (C.43:6A-41),
14 P.L.1954, c.84, s.53 (C.43:15A-53), P.L.1944, c.255, s.17
15 (C.43:16A-17), P.L.1965, c.89, s.45 (C.53:5A-45), R.S.43:10-14,
16 P.L.1943, c.160, s.22 (C.43:10-18.22), P.L.1948, c.310, s.22
17 (C.43:10-18.71), P.L.1954, c.218, s.32 (C.43:13-22.34),
18 P.L.1964, c.275, s.11 (C.43:13-22.60), R.S.43:10-57,
19 P.L.1938, c.330, s.13 (C.43:10-105), R.S.43:13-44, and
20 P.L.1943, c.189, s.5 (C.43:13-37.5). The method of determining the
21 taxable portion of a distribution from an employee trust, plan, or
22 fund shall be the same as the method used for determining the
23 taxable portion of a distribution for the purposes of the federal
24 Internal Revenue Code of 1986 (26 U.S.C. s.1 et seq.).
- 25 k. Distributive share of partnership income, excluding the gain
26 or income derived from the sale or assignment of a tax credit
27 transfer certificate pursuant to section 7 of P.L.2011, c.149
28 (C.34:1B-248) and section 10 of P.L.2014, c.63 (C.34:1B-251) from
29 any sale or assignment of a tax credit issued pursuant to an award of
30 tax credits approved by the New Jersey Economic Development
31 Authority prior to July 1, 2018, regardless of when such sale or
32 assignment occurs.
- 33 l. Amounts received as prizes and awards, except as provided
34 in N.J.S.54A:6-8 and N.J.S.54A:6-11 hereunder.
- 35 m. Rental value of a residence furnished by an employer or a
36 rental allowance paid by an employer to provide a home.
- 37 n. Alimony and separate maintenance payments to the extent
38 that such payments are required to be made under a decree of
39 divorce or separate maintenance but not including payments for
40 support of minor children.
- 41 o. Income, gain or profit derived from acts or omissions
42 defined as crimes or offenses under the laws of this State or any
43 other jurisdiction.
- 44 p. Net pro rata share of S corporation income, excluding the
45 gain or income derived from the sale or assignment of a tax credit
46 transfer certificate pursuant to section 7 of P.L.2011, c.149
47 (C.34:1B-248) and section 10 P.L.2014, c.63 (C.34:1B-251) from
48 any sale or assignment of a tax credit issued pursuant to an award of

1 tax credits approved by the New Jersey Economic Development
2 Authority prior to July 1, 2018, regardless of when such sale or
3 assignment occurs.

4 (cf: P.L.2018, c.131, s.8)

5
6 2. Section 2 of P.L.1983, c.571 (C.54A:6-21) is amended to
7 read as follows:

8 2. Contributions to certain employee trusts, plans and funds.
9 Gross income shall not include amounts contributed:

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

15 b. for annuity contracts, or treated as amounts contributed for
16 annuity contracts, under the provisions of subsection (b) of section
17 403 of the federal Internal Revenue Code of 1986 (26 U.S.C.
18 s.403);

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

22 d. to the federal Thrift Savings Fund established pursuant to 5
23 U.S.C. s.8437 if those amounts are excludable from the federal
24 gross income of the employee for the taxable year.

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

26
27 3. (New section) A taxpayer shall be allowed a deduction from
28 gross income equal to the taxpayer's contributions or premiums for
29 the taxable year contributed to an individual retirement account, or
30 paid as premiums for the purchase of an individual retirement
31 annuity, which meets the requirements of section 408 of the federal
32 Internal Revenue Code of 1986 (26 U.S.C. s.408), and that are
33 deductible from federal taxable income pursuant to section 219 of
34 the federal Internal Revenue Code of 1986 (26 U.S.C. s.219).

35
36 4. This act shall take effect immediately and apply to taxable
37 years beginning on or after the January 1 immediately following the
38 date of enactment.

39 40 41 STATEMENT

42
43 This bill excludes from gross income taxation the elective
44 contributions that employees of the public and non-profit sectors
45 make toward their retirement savings, and allows a deduction for
46 federally qualifying IRA contributions.

47 The New Jersey gross income tax currently allows the employees
48 of private, for profit, businesses to make tax-deferred contributions

1 to the retirement savings plans authorized under section 401(k) of
2 the federal Internal Revenue Code. Employees of the public and
3 nonprofit sectors do not enjoy the same access to 401(k) plans as
4 private sector employees.

5 This bill expands the current provision to incorporate tax
6 deferrals for the elective deferred compensation systems allowed to
7 employees of governments and nonprofits. Charitable, educational
8 and religious organization employees and public school employees
9 are authorized by federal law to contribute toward their retirement
10 savings under plans established under subsection (b) of section 403
11 of the federal Internal Revenue Code of 1986. State and local
12 government and authority employers are authorized by federal law
13 to make contributions under plans established under section 457 of
14 the federal Internal Revenue Code, and federal employees are
15 authorized by the federal Internal Revenue Code to make
16 contributions to the federal Thrift Savings Plan.

17 This bill gives the employees of federally tax-exempt charitable,
18 educational or religious organizations; the employees of public
19 school systems; the employees of state and local government and
20 federal employees similar tax incentives for retirement savings that
21 are provided under the New Jersey gross income tax to private
22 sector employees.

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