

ASSEMBLY, No. 512

STATE OF NEW JERSEY

220th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2022 SESSION

Sponsored by:

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District 16 (Hunterdon, Mercer, Middlesex and Somerset)

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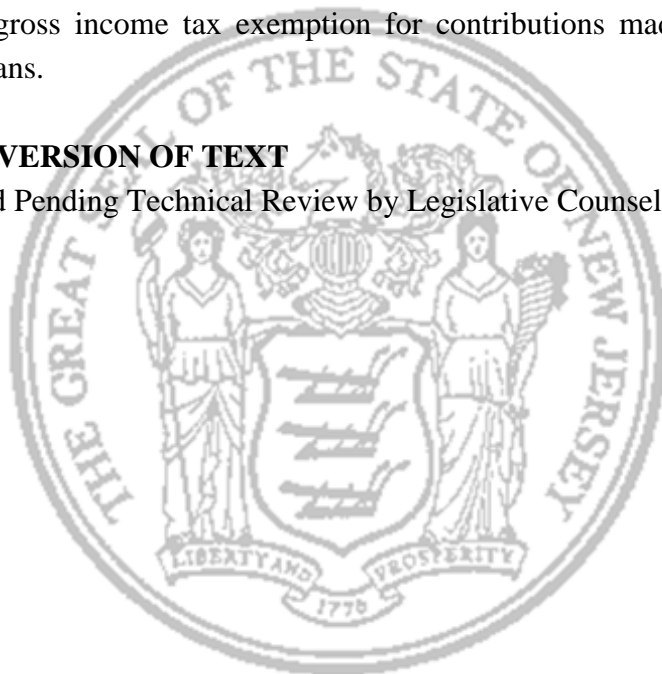
**Assemblymen Benson, Karabinchak, Assemblywoman Swain,
Assemblymen Tully, Peterson, Assemblywoman Reynolds-Jackson,
Assemblyman DePhillips, Assemblywomen N.Munoz, Dunn, Piperno,
Eulner, Assemblymen Space, Wirths, Assemblywomen DeFuccio and
Murphy**

SYNOPSIS

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

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



(Sponsorship Updated As Of: 2/13/2023)

1 AN ACT providing a gross income tax exemption for contributions
2 made to qualified retirement plans, amending N.J.S.54A:5-1 and
3 P.L.1983, c.571.
4

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

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, and amounts paid or distributed, or deemed paid or
14 distributed, out of a medical savings account that are not excluded
15 from gross income pursuant to section 5 of P.L.1997, c.414
16 (C.54A:6-27).

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

23 (1) taxes based on income;

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

41 (3) treble damages paid to the Department of Environmental
42 Protection pursuant to subsection a. of section 7 of P.L.1976, c.141
43 (C.58:10-23.11f) for costs incurred by the department in removing,
44 or arranging for the removal of, an unauthorized discharge upon the
45 failure of the discharger to comply with a directive from the
46 department to remove, or arrange for the removal of, a discharge.

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

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

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

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

1 a corporation a party to a reorganization in pursuance of a plan of
2 reorganization, solely for stock or securities in such corporation or
3 in another corporation a party to the reorganization and the transfer
4 of property to a corporation by one or more persons solely in
5 exchange for stock or securities in such corporation if immediately
6 after the exchange such person or persons are in control of the
7 corporation. For purposes of this clause, stock or securities issued
8 for services shall 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
36 of 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)
45 shall not be disqualified by reason of the fact that stock of a
46 corporation (referred to in this subclause as the "controlling
47 corporation") which before the merger was in control of the merged
48 corporation is used in the transaction, if after the transaction, the

1 corporation surviving the merger holds substantially all of its
2 properties and of the properties of the merged corporation (other
3 than stock of the controlling corporation distributed in the
4 transaction); and in the transaction, former shareholders of the
5 surviving corporation exchanged, for an amount of voting stock of
6 the controlling corporation, an amount of stock in the surviving
7 corporation which 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
40 P.L.1987, c.310 (C.54A:6-14.1), to the extent provided in that
41 section.

42 g. Gambling winnings.

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

44 i. Income in respect of a decedent.

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

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

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

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

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

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

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

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

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

43
44 2. Section 2 of P.L.1983, c.571 (C.54A:6-21) is amended to
45 read as follows:

46 Gross income shall not include amounts contributed:

47 a. by an employer on behalf of and at the election of an
48 employee to a trust which is part of a qualified cash or deferred

1 arrangement which meets the requirements of [Section
2 401(k)] subsection (k) of section 401 of the [1954] federal Internal
3 Revenue Code, 26 U.S.C. s.401, as amended ;

4 b. to a qualified pension plan which meets the requirements of
5 subsection (a) of section 401 of the federal Internal Revenue Code,
6 26 U.S.C. s.401;

7 c. for annuity contracts, or treated as amounts contributed for
8 annuity contracts, under the provisions of subsection (b) of section
9 403 of the federal Internal Revenue Code, 26 U.S.C. s.403;

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

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

15 f. or contributions made for the taxable year to an individual
16 retirement account, or premiums paid for the purchase of an
17 individual retirement annuity, which meets the requirements of
18 section 408 of the federal Internal Revenue Code, 26 U.S.C. s.408,

19 if those amounts are excludable from the federal gross income of
20 the employee for the taxable year.

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

22
23 3. This act shall take effect immediately and apply to
24 contributions made or premiums paid in taxable years beginning on
25 and after January 1, 2019.

26 27 28 STATEMENT

29
30 This bill provides taxpayers a gross income tax exclusion in the
31 amount of contributions made to a qualified retirement plan.

32 A “qualified retirement plan” means: (1) a plan established
33 under section 401(a) or section 401(k) of the federal Internal
34 Revenue Code; (2) amounts paid for annuity contracts under section
35 403(b) of the federal Internal Revenue Code, allowed to employees
36 of governments and nonprofits; (3) a deferred compensation plan
37 established under section 457 of the federal Internal Revenue Code,
38 allowed for state and local government and authority employees; (4)
39 a federal Thrift Savings Plan; and (5) a standard Individual
40 Retirement Account, pursuant to section 408 of the federal Internal
41 Revenue Code. The contributions to these plans are taxed upon
42 distribution from the account.

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