

**SENATE COMMITTEE SUBSTITUTE FOR
SENATE, No. 737 and SENATE, No. 951**

**STATE OF NEW JERSEY
220th LEGISLATURE**

ADOPTED FEBRUARY 28, 2022

Sponsored by:

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SYNOPSIS

Excludes contributions made to certain retirement savings plans under gross income tax.

CURRENT VERSION OF TEXT

Substitute as adopted by the Senate Budget and Appropriations Committee.



(Sponsorship Updated As Of: 3/3/2022)

1 **AN ACT** excluding contributions to certain retirement savings plans
 2 under the gross income tax, 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

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

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

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

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

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

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

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

12 (i) A statutory merger or consolidation;

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

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

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

34 (v) A recapitalization;

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

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

46 (viii) A transaction otherwise qualifying under subclause (i) shall
47 not be disqualified by reason of the fact that stock of a corporation
48 (referred to in this subclause as the "controlling corporation") which

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

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

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

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

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

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

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

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

43 g. Gambling winnings.

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

45 i. Income in respect of a decedent.

46 j. Amounts distributed or withdrawn from an employee trust ,
47 plan, account, or fund attributable to contributions to the trust ,
48 plan, account, or fund which were excluded from gross income

1 under the provisions of chapter 6 of Title 54A of the New Jersey
2 Statutes or that were deducted from gross income under the
3 provisions of section 3 of P.L. , c. (C.) (pending before the
4 Legislature as this bill), amounts rolled over from an IRA, as
5 defined pursuant to subsection (a) of section 408 of the federal
6 Internal Revenue Code of 1986, 26 U.S.C. s.408, that is not a Roth
7 IRA, as defined pursuant to subsection b. of section 2 of
8 P.L.1998,c.57 (C.54A:6-28) to an IRA that is a Roth IRA, and
9 pensions and annuities except to the extent of exclusions in
10 N.J.S.54A:6-10 hereunder, notwithstanding the provisions of
11 N.J.S.18A:66-51, P.L.1973, c.140, s.41 (C.43:6A-41), P.L.1954,
12 c.84, s.53 (C.43:15A-53), P.L.1944, c.255, s.17 (C.43:16A-17),
13 P.L.1965, c.89, s.45 (C.53:5A-45), R.S.43:10-14, P.L.1943, c.160,
14 s.22 (C.43:10-18.22), P.L.1948, c.310, s.22 (C.43:10-18.71),
15 P.L.1954, c.218, s.32 (C.43:13-22.34), P.L.1964, c.275, s.11
16 (C.43:13-22.60), R.S.43:10-57, P.L.1938, c.330, s.13 (C.43:10-
17 105), R.S.43:13-44, and P.L.1943, c.189, s.5 (C.43:13-37.5). The
18 method of determining the taxable portion of a distribution from an
19 employee trust, plan, or fund shall be the same as the method used
20 for determining the taxable portion of a distribution for the purposes
21 of the federal Internal Revenue Code of 1986 (26 U.S.C. s.1 et
22 seq.).

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

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

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

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

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

42 p. Net pro rata share of S corporation income, excluding the
43 gain or income derived from the sale or assignment of a tax credit
44 transfer certificate pursuant to section 7 of P.L.2011, c.149
45 (C.34:1B-248) and section 10 P.L.2014, c.63 (C.34:1B-251) from
46 any sale or assignment of a tax credit issued pursuant to an award of
47 tax credits approved by the New Jersey Economic Development

1 Authority prior to July 1, 2018, regardless of when such sale or
2 assignment occurs.

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

4

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

7 Gross income shall not include amounts contributed ;

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

13 b. to a qualified pension plan that meets the requirements of
14 subsection (a) of section 401 of the federal Internal Revenue Code
15 (26 U.S.C. s.401);

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

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

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

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

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

30

31 3. This act shall take effect immediately and apply to taxable
32 years beginning on or after January 1 next following enactment.