

ASSEMBLY, No. 4473

STATE OF NEW JERSEY

221st LEGISLATURE

INTRODUCED JUNE 3, 2024

Sponsored by:

Assemblyman DAN HUTCHISON

District 4 (Atlantic, Camden and Gloucester)

SYNOPSIS

Eliminates statute of limitations on income tax assessments that arise out of erroneous refunds induced by fraud.

CURRENT VERSION OF TEXT

As introduced.



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1 AN ACT concerning statutes of limitations on certain gross income
2 tax assessments and amending N.J.S.54A:9-4.

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

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7 1. N.J.S.54A:9-4 is amended to read as follows:

8 54A:9-4. (a) General. Except as otherwise provided in this
9 section, any tax under this act shall be assessed within **[3]** three
10 years after the return was filed (whether or not such return was filed
11 on or after the date prescribed).

12 (b) Time return deemed filed.

13 (1) Early return. For purposes of this section a return of income
14 tax, except withholding tax, filed before the last day prescribed by
15 law or by regulations promulgated pursuant to law for the filing
16 thereof, shall be deemed to be filed on such last day.

17 (2) Return of withholding tax. For purposes of this section, if a
18 return of withholding tax for any period ending with or within a
19 calendar year is filed before April 15 of the succeeding calendar
20 year, such return shall be deemed to be filed on April 15 of such
21 succeeding calendar year.

22 (c) Exceptions.

23 (1) Assessment at any time. The tax may be assessed at any time
24 ~~[if--]~~ if:

25 (A) No return is filed~~[,]~~ ;

26 (B) A false or fraudulent return is filed with intent to evade tax,
27 regardless of whether the false or fraudulent return results in a
28 refund to the taxpayer, which false or fraudulent return shall not
29 include a taxpayer's inadvertence, reliance on incorrect technical
30 advice, honest difference of opinion, negligence, or carelessness; or

31 (C) The taxpayer fails to comply with N.J.S.54A:8-7, in not
32 reporting a change or correction increasing the taxpayer's Federal
33 taxable income as reported on **[his]** the taxpayer's Federal income
34 tax return, or in not reporting a change or correction which is
35 treated in the same manner as if it were a deficiency for Federal
36 income tax purposes, in not filing an amended return, or, for both
37 partners and partnerships, in not reporting final federal adjustments
38 resulting from a partnership audit pursuant to section 6225(a)(1) of
39 the Internal Revenue Code (26 U.S.C. s. 6225(a)(1)).

40 (2) Extension by agreement. Where, before the expiration of the
41 time prescribed in this section for the assessment of tax, both the
42 director and the taxpayer have consented in writing to its
43 assessment after such time, the tax may be assessed at any time
44 prior to the expiration of the period agreed upon. The period so

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 agreed upon may be extended by subsequent agreements in writing
2 made before the expiration of the period previously agreed upon.

3 (3) Report of changed or corrected Federal income. If the
4 taxpayer shall, pursuant to subsection a. of N.J.S.54A:8-7, report a
5 change or correction or file an amended return increasing the
6 taxpayer's Federal taxable income or report a change or correction
7 which is treated in the same manner as if it were a deficiency for
8 Federal income tax purposes, the assessment (if not deemed to have
9 been made upon the filing of the report or amended return) may be
10 made at any time within **[2]** two years after such report or amended
11 return was filed. The amount of such assessment of tax shall not
12 exceed the amount of the increase in New Jersey tax attributable to
13 such Federal change or correction. The provisions of this paragraph
14 shall not affect the time within which or the amount for which an
15 assessment may otherwise be made.

16 (4) Recovery of erroneous refund. An erroneous refund shall be
17 considered an underpayment of tax on the date made~~], and an~~ .
18 An assessment of a deficiency arising out of an erroneous refund
19 may be made ~~[at any time]~~ ; within **[3]** three years from the
20 making of the refund~~], except that the assessment may be made~~
21 ~~within 5 years from the making of the refund if]~~ ; or at any time if
22 it appears that any part of the refund was induced by [fraud or
23 misrepresentation of a material fact] the filing of a false or
24 fraudulent return with intent to evade tax, which false or fraudulent
25 return shall not include a taxpayer's inadvertence, reliance on
26 incorrect technical advice, honest difference of opinion, negligence,
27 or carelessness.

28 (5) Request for prompt assessment. If a return is required for a
29 decedent or for the decedent's estate during the period of
30 administration, the tax shall be assessed within 18 months after
31 written request therefor (made after the return is filed) by the
32 executor, administrator or other person representing the estate of
33 such decedent, but not more than **[3]** three years after the return
34 was filed, except as otherwise provided in this subsection and
35 subsection (d).

36 (6) Final federal adjustments resulting from a Federal
37 Partnership Audit. Tax may be assessed against the partnership,
38 direct or indirect partners, or both, within two years of the time that
39 a partnership files a Federal Adjustments Report as required by
40 N.J.S.54A:8-7 that includes Final Federal Adjustments from a
41 federal partnership audit or administrative adjustments request that
42 would result in additional New Jersey income tax for one or more
43 direct or indirect partners.

44 (d) Omission of income on return. The tax may be assessed at
45 any time within **[6]** six years after the return was filed ~~[if--]~~ if:

46 (1) An individual omits from ~~[his]~~ the individual's New Jersey
47 income an amount properly includible therein which is in excess of

1 **【25%】** 25 percent of the amount of New Jersey income stated in the
2 return; or

3 (2) An estate or trust omits income from its return in an amount
4 in excess of **【25%】** 25 percent of its income determined as if it
5 were an individual, computing **【his】** the individual's New Jersey
6 income under this act.

7 For purposes of this subsection there shall not be taken into
8 account any amount which is omitted in the return if such amount is
9 disclosed in the return, or in a statement attached to the return, in a
10 manner adequate to apprise the director of the nature and amount of
11 such item.

12 (e) Suspension of running of period of limitation. The running
13 of the period of limitations on assessment or collection of tax or
14 other amount (or of a transferee's liability) shall, after the mailing of
15 a notice of deficiency, be suspended for the period during which the
16 director is prohibited under subsection (c) of **【section】**
17 N.J.S.54A:9-2 from making the assessment or from collecting by
18 levy.

19 (cf: P.L.2022, c.133, s.4)

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21 2. This act shall take effect immediately and shall retroactively
22 apply to assessments of deficiencies arising out of erroneous
23 refunds, which were subject to assessment pursuant to paragraph (4)
24 of subsection (c) of N.J.S.54A:9-4 and were made within the five
25 years preceding the date of enactment of this act.

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STATEMENT

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30 This bill would eliminate a conflict between two fraud
31 exceptions contained in current State law governing the statute of
32 limitations for tax assessments under the “New Jersey Gross
33 Income Tax Act.”

34 Under current law, the Division of Taxation (“division”) in the
35 Department of the Treasury is required to assess additional taxes
36 within three years after a taxpayer has filed a tax return. However,
37 this three-year statute of limitations does not apply in certain cases,
38 including when a taxpayer has filed a false or fraudulent return. In
39 other words, the division may issue an assessment at any time if a
40 taxpayer files a false or fraudulent return with the intent to evade
41 tax.

42 Current law also authorizes the division to issue an assessment
43 for a deficiency arising out of an erroneous refund within three
44 years from the issuance of the refund. This statute of limitations is
45 extended to five years in cases in which any part of the refund was
46 induced by fraud or misrepresentation of a material fact. The
47 statute, however, does not explicitly define “fraud” or
48 “misrepresentation of a material fact,” which has led to questions

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1 concerning whether the statute treats fraud as having a standard that
2 is different from misrepresentation of a material fact.

3 This bill seeks to eliminate the disparity in treatment between
4 when: 1) a taxpayer files a false or fraudulent return, in which case
5 the division may assess additional taxes at any time; and 2) a
6 fraudulent return yields a refund to a taxpayer, in which case the
7 division may assess additional taxes within five years from the
8 issuance of the refund. Specifically, the bill would eliminate the
9 five-year statute of limitations on assessments for erroneous refunds
10 that are induced by fraud. With this change, the bill provides that
11 the division may assess additional taxes at any time if it appears
12 that any part of an erroneous refund was induced by the filing of a
13 false or fraudulent return with intent to evade tax. This change
14 would eliminate the current conflict between the two fraud
15 exceptions and specifies that the filing of a false or fraudulent
16 return would not include a taxpayer's inadvertence, reliance on
17 incorrect technical advice, honest difference of opinion, negligence,
18 or carelessness. The bill eliminates the use of the term
19 "misrepresentation of a material fact."

20 Finally, the bill's provisions would take effect immediately and
21 would apply retroactively to assessments of deficiencies arising out
22 of erroneous refunds that were made within the five years preceding
23 the date of enactment of the bill.