SETON HALL LEGISLATIVE JOURNAL

VOL. 3 SUMMER 1978 NO. 2

THE NEW JERSEY GROSS INCOME TAX ACT*

*by Peter C. Aslanides***
*John B. Brescher, Jr.****

On July 8, 1976 Governor Brendan T. Byrne signed the New Jersey Gross Income Tax Act[1] into law. This law applies to income earned or received on or after July 1, 1976.[2]

The Gross Income Tax rates are a flat two percent on the first $20,000 of New Jersey taxable income and $400 plus two and one-half percent on New Jersey taxable income in excess of $20,000.[3]

Taxpayers Covered

Persons subject to the tax under the Gross Income Tax Act include:

1. Resident individuals, who are subject to tax on all income items covered by the Act.[4]

2. Nonresident individuals, who are subject to tax only as to certain New Jersey source income items.[5]

A domiciliary of New Jersey is treated as a resident of New Jersey, unless the domiciliary establishes that he maintains no permanent place of abode in New Jersey and maintains one elsewhere. In addition, he must

---

* Reprinted by permission from the New Jersey State *Bar Journal* Summer issue, August, 1978 No. 84. Published Quarterly by the New Jersey State Bar Association.

** B.A., Columbia University; LL.B., Georgetown University; LL.M., New York University; Member, New Jersey Bar.

*** B.S., Lehigh University; J.D., LL.M., Georgetown University; Member, New Jersey Bar.

1 N.J. STAT. ANN. §§ 54A:1-1 to: 9-28 (West 1978).

2 N.J. STAT. ANN. § 54A:9-27(a) (West 1978); Division of Tax, N.J. Dep't of the Treasury, *General Information Gross Income Tax* (P.L. 1976, c. 47) N.J.-Q-1, No. 2 (1977) [hereinafter cited as *General Information Gross Income Tax*].

3 N.J. STAT. ANN. § 54A:2-1 (West 1978).

4 *Id.*

5 N.J. STAT. ANN. §§ 54A:2-1,:5-5,:5-8 (West 1978).

spend in the aggregate not more than thirty days during the taxable year in New Jersey.[6]

A person who is not domiciled in New Jersey is treated as a New Jersey resident if he maintains a permanent place of abode in New Jersey and spends in the aggregate more than 183 days of the taxable year, that is more than one half the year, in New Jersey.[7] However, a non-New Jersey domiciliary who is in the Armed Forces and stationed in New Jersey is not a resident taxpayer for purposes of the Act even though he maintains a permanent place of abode in New Jersey and spends more than 183 days of the taxable year in New Jersey.[8]

3. Resident estate, which is subject to tax on all income items covered by the Act.[9]

4. Nonresident estate, which is subject to tax only as to certain New Jersey source income items.[10]

The Act defines a resident estate to be one where the decedent was domiciled in New Jersey at the time of his death.[11]

5. Resident trust, which is subject to tax on all income items covered by the Act.[12]

6. Nonresident trust, which is subject to tax only as to certain New Jersey source income items.[13]

A resident trust includes a trust, or the portion of a trust, that receives property by the Will of a decedent who was a domiciliary of New Jersey at the time of his death.[14]

As to property placed into trust during a person's lifetime, either into a revocable or irrevocable trust, the trust's residence, or each portion of the trust's residence, is again tested by the domicile of the transferor of the property to the trust. An irrevocable trust, or portion of an irrevocable trust, is a New Jersey resident trust or portion, if the transferor is a New Jersey domiciliary at the time he transfers the property to the trust.[15]

---

[6] N.J. STAT. ANN. § 54A:1-2 m 1 (West 1978); *General Information Gross Income Tax*, *supra* note 2, No. 6.

[7] N.J. STAT. ANN. § 54A:1-2 m 2 (West 1978).

[8] *Id.*

[9] N.J. STAT. ANN. §§ 54A:2-1,:5-3 (West 1978).

[10] N.J. STAT. ANN. §§ 54A:2-1,:5-8 (West 1978).

[11] N.J. STAT. ANN. § 54A:1-2o(1) (West 1978).

[12] N.J. STAT. ANN. §§ 54A:2-1,:5-3 (West 1978).

[13] N.J. STAT. ANN. §§ 54A:2-1,:5-8 (West 1978).

[14] N.J. STAT. ANN. § 54A:1-2o(2) (West 1978).

[15] N.J. STAT. ANN. § 54A:1-2o(3)(a) (West 1978).

A trust that is revocable when created is a resident trust if the grantor of the trust is a New Jersey domiciliary when he creates it.[16] If, when the trust becomes irrevocable, the grantor is a non-New Jersey domiciliary, the trust will become a nonresident trust.[17] If the grantor is a domiciliary when the trust becomes irrevocable, the trust will always be a resident trust.[18]

A charitable trust or a trust forming part of a pension or profit-sharing plan is not subject to tax under the Gross Income Tax Act.[19] However, income that is received by a charitable remainder annuity trust, a charitable remainder unitrust or a trust with charitable residuary beneficiaries and not distributed or credited to its beneficiaries is subject to tax at the trust level.[20]

Corporations are not subject to tax under the Gross Income Tax Act. Neither are associations, trusts or other unincorporated entities which are taxed as corporations for federal income tax purposes because of the prevalence of corporate attributes.[21] Real estate investment trusts are not taxed either.[22]

The partnership entity is also not subject to tax under the Act.[23] Rather, each partner is subject to tax on his distributive share of partnership income.[24]

Taxable Income Items

The Gross Income Tax Act lists specific income items that are subject to tax.[25]

A resident taxpayer is taxed on the following items:

1. Salaries, wages, tips, fees, commissions, bonuses and other remuneration received for services rendered whether in cash or property.[26] Since there is no New Jersey exclusion, sick pay is taxed.[27]

---

[16] *Id.*

[17] N.J. STAT. ANN. § 54A:1-2o(3)(b) (West 1978).

[18] *Id.*

[19] N.J. STAT. ANN. § 54A:2-1 (West 1978).

[20] *General Information Gross Income Tax*, *supra* note 2, Nos. 83, 88, 89.

[21] N.J. STAT. ANN. § 54A:2-3 (West 1978).

[22] [1977] New Jersey Tax Handbook (P-H) ¶ 315. (Partnership must report on its operation.) *See also* N.J. STAT. ANN. 54A:8-6 (West 1978).

[23] N.J. STAT. ANN. § 54A:2-2 (West 1978).

[24] N.J. STAT. ANN. §§ 54A:2-2,:5-4 (West 1978).

[25] N.J. STAT. ANN. § 54A:5-1 (West 1978).

[26] N.J. STAT. ANN. § 54A:5-1(a) (West 1978); *see* Pennsylvania v. Staley, 476 Pa. 178, 381 A.2d 1280 (1978).

[27] *General Information Gross Income Tax*, *supra* note 2, Nos. 15, 19.

The rental value of a residence furnished by an employer is not subject to tax if the lodging is furnished on the business premises of the employer, the lodging is furnished for the convenience of the employer and the employee is required to accept such lodging as a condition of his employment.[28] The rental value of a residence provided for a clergyman by his church or congregation is not income.[29]

The cost of pure life insurance protection (PS factor) of group life insurance in excess of $50,000 is apparently taxed as compensation. Reimbursed moving expenses to an employee are not taxed to the extent expended for moving expenses.[30] Health insurance premiums paid by an employer that are exempt from federal tax should similarly be exempt from the New Jersey Gross Income Tax Act if the federal treatment is adopted by New Jersey.

Amounts added to compensation as a meals allowance and thereafter deducted by the employer for meals furnished on the employer's premises for the employer's convenience are not treated as compensation.[31] Where the employee is provided a cash meal allowance which is paid regularly, in advance, and stated separately from salary and where he is not required to eat at any particular location, any such meal allowance constitutes taxable compensation.[32]

Payments for accumulated vacation time constitute taxable compensation.[33] Supplemental payments from a former employer are also taxable.[34]

2. The net profits from the operation of an unincorporated business or profession are subject to tax under the Gross Income Tax Act.[35] Net profits are determined by deducting all costs and expenses relating to the business or profession, except that taxes based on income may not be deducted.[36]

3. All interest received by a taxpayer is subject to tax under the Gross Income Tax Act, except that interest earned on obligations of the United States government (for example, interest of U.S. "E" and "H" bonds) and interest earned on obligations of the State of New Jersey and any of its political subdivisions are specifically excluded.[37] Interest on obligations of

---

[28] *Id.* No. 31.

[29] N.J. ADMIN. CODE 18:35-1.2 (1978).

[30] *General Information Gross Income Tax*, *supra* note 2, No. 76.

[31] *Id.* No. 17.

[32] *Id.* No. 18.

[33] *Id.* No. 28.

[34] *Id.* No. 33.

[35] N.J. STAT. ANN. § 54A:5-1(b) (West 1978).

[36] *Id.*

[37] N.J. STAT. ANN. §§ 54A:5-1(e),:6-14 (West 1978); *General Information Gross Income Tax*, *supra* note 2, No. 34.

other states and their political subdivisions is subject to tax.[38] Interest income is not offset by any interest expense or other expenses.

4. All dividends received by a taxpayer are subject to tax under the Gross Income Tax Act, regardless of where the corporations paying the dividends are located or incorporated.[39] The gross amount of all dividends is taxed without any allowance for any expenses attributable to the receipt of dividend income. If a dividend is nontaxable for federal income tax purposes because it represents a return of capital, it will not be taxed under the Act. A dividend taxed for federal income tax purposes as a capital gain because it represents a capital gain distribution or a distribution in excess of earnings and profits and capital investment is also taxed as a capital gain for purposes of the Gross Income Tax Act.

In the case of a Subchapter S corporation, a shareholder of the corporation is required to report the dividends and other distributed income he receives from the Subchapter S corporation. However, the shareholder is not required to report the undistributed taxable income of the Subchapter S corporation until it is actually distributed to him.[40]

As under the Internal Revenue Code, a distribution must be out of current or accumulated earnings and profits to be treated as a dividend.[41] There is no $100 exclusion provided for dividends under the Gross Income Tax Act.

Stock dividends and stock rights are taxable under the Act when they are taxable for federal income tax purposes.

5. Net rents and royalties, and net income derived from patents and copyrights are subject to tax under the Gross Income Tax Act.[42] A taxpayer may deduct his ordinary and necessary business expenses in arriving at these amounts.[43]

6. Gambling winnings are subject to tax.[44] Gambling losses are an offset to gambling winnings if incurred within the same year and the taxpayer can substantiate the losses.[45] However, lottery winnings from the New Jersey State Lottery are not subject to tax.[46]

---

[38] N.J. STAT. ANN. § 54A:6-14 (West 1978); *General Information Gross Income Tax*, *supra* note 2, No. 35.

[39] N.J. STAT. ANN. § 54A:5-1(f) (West 1978); *General Information Gross Income Tax*, *supra* note 2, No. 36.

[40] *General Information Gross Income Tax*, *supra* note 2, No. 37.

[41] N.J. STAT. ANN. § 54A:5-1(f) (West 1978).

[42] N.J. STAT. ANN. § 54A:5-1(d) (West 1978).

[43] *General Information Gross Income Tax*, *supra* note 2, No. 37.

[44] N.J. STAT. ANN. § 54A:5-1(g) (West 1978).

[45] *General Information Gross Income Tax*, *supra* note 2, No. 25.

[46] N.J. STAT. ANN. § 54A:6-11 (West 1978).

7. Amounts received as prizes and awards are taxed.[47] Scholarships and fellowships or research grants to the extent expended by the taxpayer for the purposes that the amounts are given and to the extent they do not represent payment for services are not taxed.[48]

8. Income in respect of decedent received by an individual, estate or trust is subject to tax.[49]

9. A beneficiary of an estate or trust must report his prorata share of the current income of the estate or trust if under the applicable governing instrument the income is required to be distributed currently to the beneficiary, whether or not, or if the estate or trust actually makes a distribution to the beneficiary.[50] If income is not required to be distributed currently and there is no distribution to the beneficiary, the trust or estate, and not the beneficiary, will be taxed on the undistributed current income under the Gross Income Tax Act.[51] If the estate or trust pays the tax on the undistributed income, and it is distributed to the beneficiary in a subsequent year, the beneficiary will not be taxed on receipt of this previously undistributed income.[52] The beneficiary reports any income he is required to report under these rules on his tax return for the year in which the taxable year of the estate or trust ends.[53]

As under the Internal Revenue Code, distributions of trust corpus are not taxed except to the extent that such distributions are deemed to pull out distributable net income to the beneficiary.[54] An estate or trust may deduct income commissions paid to the fiduciary from its gross income and the recipient of such commissions has reportable income under the Act.[55] No other trust or estate expense is a permissible deduction item.[56] If income is required to be distributed or credited to a charitable beneficiary, such income is not taxed.[57]

10. Alimony and separate maintenance payments payable under decrees of divorce or separate maintenance are taxed. However, payments for the support of minor children are not taxed.[58]

---

[47] N.J. STAT. ANN. § 54A:5-1(l) (West 1978).

[48] N.J. STAT. ANN. § 54A:6-8 (West 1978); *General Information Gross Income Tax*, *supra* note 2, No. 9.

[49] N.J. STAT. ANN. § 54A:5-1(j) (West 1978).

[50] N.J. STAT. ANN. §§ 54A:5-1(h),:5-3 (West 1978).

[51] N.J. STAT. ANN. § 54A:5-3 (West 1978).

[52] *Id.*; *General Information Gross Income Tax*, *supra* note 2, No. 87.

[53] N.J. STAT. ANN. § 54A:5-3 (West 1978).

[54] *General Information Gross Income Tax*, *supra* note 2, No. 90.

[55] *Id.* No. 85.

[56] *Id.* No. 86.

[57] *Id.* No. 85.

[58] N.J. STAT. ANN. § 54A:5-1(n) (West 1978).

11. Capital gains, short-term or long-term, are taxed under the Gross Income Tax Act and there is no difference in treatment as between short-term and long-term capital gains.[59] A taxpayer uses his federal tax basis for computing his gain or loss.[60] There is no step up in basis to fair market value as of date of enactment of the Gross Income Tax Act. One hundred percent of the capital gain is taxed under the Act. Furthermore, only capital losses incurred in the current year may be used as a deduction.[61] No capital loss carryback or carryforward is provided.[62] Capital transactions exempt from federal income tax, such as tax-free reorganizations or incorporations, are also exempt under the Gross Income Tax Act.[63] Gains from the disposition of New Jersey obligations (e.g. bonds) and certain federal securities are not taxed under the Gross Income Tax Act.[64]

There is no grandfather clause for pre-July 1, 1976 installment sales where amounts are received after June 30, 1976 under the Gross Income Tax Act. Therefore, installment payments received after June 30, 1976 as to prior transactions are taxed.[65]

12. Income from pensions and annuities are includable in New Jersey gross income to the extent allocated to employer contributions.[66] The portion allocated to employee contributions is not taxed because it would have been taxed previously. In addition, similar to the provisions of Section 72(d) of the Internal Revenue Code, if an employee during the first three years of receiving an annuity receives an amount which equals or exceeds his contributions, he can exclude from New Jersey gross income the full amount of his contribution. Thereafter, he must include the entire amount received in New Jersey gross income.[67]

New Jersey gross income does not include any amount received under any public or private pension plan by reason of a permanent and total disability.[68] There is a yearly exclusion from New Jersey gross income for those

---

[59] N.J. STAT. ANN. § 54A:5-1(c) (West 1978); *General Information Gross Income Tax*, *supra* note 2, No. 49.

[60] N.J. STAT. ANN. § 54A:5-1(c) (West 1978); *General Information Gross Income Tax*, *supra* note 2, No. 48.

[61] N.J. STAT. ANN. § 54A:5-1(c) (West 1978); *General Information Gross Income Tax*, *supra* note 2, No. 50.

[62] *General Information Gross Income Tax*, *supra* note 2, No. 52.

[63] N.J. STAT. ANN. § 54A:5-1(c) (West 1978).

[64] *Id.*

[65] *General Information Gross Income Tax*, *supra* note 2, No. 2.

[66] N.J. STAT. ANN. § 54A:5-1(j) (West 1978).

[67] N.J. STAT. ANN. § 54A:6-10 (West 1978).

[68] *Id.*

who receive pension or annuity payments and are at least 62 years of age or disabled under Social Security. The exclusion is $10,000 for married couples filing jointly, $5,000 for married couples filing separately and $7,500 for a single individual.[69]

If a taxpayer is eligible for the exclusion mentioned previously, but his pension or annuity income is less than his eligible exclusion, he may apply his exclusion against other income. However, he may do this *only if* his income from the following sources is no more than $3,000 during the year:

A. Salaries, wages, tips, fees, commissions, bonuses and other remunerations received for services whether in cash or property.
B. Net profits from business.
C. Distributive share of partnership income.[70]

If someone sixty-two years of age or over would be eligible to receive payments under either the Federal Social Security Act or the Railroad Retirement Act if he were covered by either but, in fact, is not covered by either, he is allowed an additional yearly exclusion of $6,000 if he files a joint Gross Income Tax return and $3,000 if he files single or married filing separately.[71]

The Gross Income Tax Act only partially recognizes the concept of Individual Retirement Accounts (IRAs) is created under the Employee Retirement Income Security Act of 1974. Contributions to such accounts each year are not deductible from income under the Act.[72] However, income earned by such accounts each year is excludable from New Jersey gross income.[73] This lack of total recognition of IRAs can cause some harsh results. For example, if a company terminates its profit-sharing plan and distributes all of the proceeds to its participants, for federal income tax purposes, under certain circumstances it is possible for participants to totally avoid taxation on the money received at that time if they contribute the entire amount to an IRA within sixty days of receipt.[74] Under the New Jersey Gross Income Tax Act this distribution will be included in income in the year of receipt.[75] The only exclusions are those mentioned previously for the recipient who is sixty-two years of age or older.[76]

---

[69] *Id.*; *General Information Gross Income Tax*, *supra* note 2, No. 91.
[70] N.J. STAT. ANN. § 54A:6-15(a) (West 1978).
[71] N.J. STAT. ANN. § 54A:6-15(b) (West 1978).
[72] *General Information Gross Income Tax*, *supra* note 2, No. 101.
[73] *Id.*
[74] I.R.C. § 402(a)(5).
[75] *General Information Gross Income Tax*, *supra* note 2, No. 106.
[76] N.J. STAT. ANN. § 54A:6-10 (West 1978).

A lump-sum distribution to a surviving spouse is subject to the tax imposed by the Act, but is also eligible for the exclusions.[77] Contributions to Keogh Plans also are not deductible generally; however, contributions made on behalf of employees are deductible as a business expense to self-employed persons and partnerships to determine net income from the business.[78] Also, the New Jersey Division of Taxation has recently stated that pension payments from Keogh Plans are entitled to the same $10,000, $7,500 and $5,000 exclusions mentioned before in connection with other pension income.[79]

Nonresidents of New Jersey who worked in New Jersey and receive pensions as a result of this employment are required to include these pensions in New Jersey income. They are also entitled to all of the exclusions as residents.[80]

New Jersey gross income does not include any pension, disability or retirement programs of the federal government or any other governmental body for persons not covered by the federal Social Security Act or the Railroad Retirement Act. However, the total amount of benefits to be excluded shall not exceed the maximum amount of benefits payable and allowable for exclusion under the federal Social Security Act and the Railroad Retirement Act.[81] However, the total amount of benefits to be excluded shall not exceed the maximum amount of benefits payable and allowable for exclusion under the Federal Social Security Act and the Railroad Retirement Act.[81]

13. A taxpayer is required to report his distributive share of partnership income under the Gross Income Tax Act.[82] Each partnership must file a return and report all items of income and deductions within three and one-half months after the close of the partnership's taxable year.[83] Each partner reports his share of partnership income, whether or not distributed, during his tax year in which the tax year of the partnership ends.[84] A partner's federal distributive share may be reduced for New Jersey purposes by the amount of the job credit claimed for federal purposes.

---

77 *General Information Gross Income Tax*, *supra* note 2, No. 104.

78 *Id.* No. 100.

79 State Tax News, Vol. VII, No. 2 at 39 (1978).

80 N.J. STAT. ANN. § 54A:5-8(2) (West 1978); *General Information Gross Income Tax*, *supra* note 2, No. 107.

81 N.J. STAT. ANN. § 54A:6-10 (West 1978).

82 N.J. STAT. ANN. § 54A:5-1(k) (West 1978); *General Information Gross Income Tax*, *supra* note 2, No. 5.

83 N.J. STAT. ANN. § 54A:8-6(b) (West 1978); *General Information Gross Income Tax*, *supra* note 2, No. 5.

84 N.J. STAT. ANN. § 54A:5-4 (West 1978).

Excludable Income Items

In addition to the items already mentioned as not being subject to the tax under the Act, there are several others. The excludable items include:

1. Proceeds of life insurance contracts payable by reason of death.[85]

2. Employee's death benefits paid by an employer.[86]

3. Property acquired by gift or inheritance. However, this exclusion does not exclude income generated from the property subject to the gift or inheritance or a gift or inheritance of an income interest.[87]

4. Amounts received from injuries or sickness under Worker's Compensation Acts.[88] Neither are damages received on account of personal injuries or sickness, even though they may be received under accident or health insurance policies.[89] Furthermore, permanent and total disability benefits and unemployment insurance benefits are not subject to tax.[90]

5. Gains from the sale of a principal residence by a person sixty-five years of age or over where the adjusted sales price is $35,000 or less and the property has been used as a principal residence for at least five of the last eight years [are] not taxed.[91] If the price is over $35,000, a prorata portion of the gain is taxed.[92]

6. For taxpayers who are either under sixty-five years of age or over sixty-five years of age and sell a principal residence for more than $35,000, another rule provides that gain from the sale of a principal residence is not taxed where a new residence is purchased within eighteen months (twenty-four months in the case of a newly constructed residence) if the purchase price of the new residence is equal to or greater than the selling price of the principal residence sold.[93] If the purchase price is less than the selling

---

[85] N.J. STAT. ANN. § 54A:6-4(a) (West 1978); *General Information Gross Income Tax, supra* note 2, No. 15.

[86] N.J. STAT. ANN. § 54A:6-4(b) (West 1978); *General Information Gross Income Tax, supra* note 2, No. 15.

[87] N.J. STAT. ANN. § 54A:6-5 (West 1978); *General Information Gross Income Tax, supra* note 2, No. 15.

[88] N.J. STAT. ANN. § 54A:6-6(a) (West 1978); *General Information Gross Income Tax, supra* note 2, No. 19

[89] N.J. STAT. ANN. § 54A:6-6(b),(c) (West 1978); *General Information Gross Income Tax, supra* note 2, No. 15.

[90] N.J. STAT. ANN. §§ 54A:6-10,-13 (West 1978); *General Information Gross Income Tax, supra* note 2, Nos. 15, 19, 39.

[91] N.J. STAT. ANN. § 54A:6-9(b) (West 1978); *General Information Gross Income Tax, supra* note 2, Nos. 41, 45.

[92] N.J. STAT. ANN. § 54A:6-9(b) (West 1978).

[93] N.J. STAT. ANN. § 54A:6-9(a) (West 1978); *General Information Gross Income Tax, supra* note 2, Nos. 43, 47.

price, any gain on the sale must be included in income to the extent that the gain is represented by the excess of the selling price over the purchase price.

7. Payments received under federal Social Security Act and the Railroad Retirement Act and compensation paid for service in the United States Armed Forces to a person not domiciled in New Jersey are not taxed under the Act.[94] The New Jersey homestead tax rebate is neither subject to tax under the Act.[95] A refund of federal or New Jersey income taxes is also not a taxable item.[96] Tuition payments for job-related courses made by an employer, where completion of the courses is not a condition precedent to continued employment, are not taxed.[97]

Nonresidents

Under the Gross Income Tax Act, a nonresident only reports those items of income that were discussed with regard to resident taxpayers that arise by reason of the ownership by the nonresident of real or tangible personal property located in New Jersey (e.g., gain from the sale of New Jersey real estate or from the sale of tangible property located in New Jersey) or that arise in connection with a trade, profession or occupation carried on in New Jersey (which, if such a trade, business or occupation is conducted in New Jersey, would also subject to tax income from intangible personal property employed within New Jersey), or that represents the nonresidents distributive share of an unincorporated business or profession within New Jersey.[98]

To determine his tax under the Gross Income Tax Act, a taxpayer must first add all the items that are subject to tax. He may not offset a loss in one category of items against a gain in another category.[99] For example, rental losses may only be used as offset to rental income since they are within the same category; the rental losses may not be used as an offset to dividends or other nonrental categories. Partnership losses from one partnership may only be used as an offset to income from other partnerships.[100] As a further

[94] *General Information Gross Income Tax*, *supra* note 2, Nos. 9, 15, 40.

[95] *Id.* No. 16.

[96] *Id.* Nos. 27, 29 (Refunds of other state income taxes paid in prior years might require an adjustment to the tax credit provided for taxes paid to other states if the amount refunded was used in the credit computation in the prior year.)

[97] *Id.* No. 32.

[98] N.J. STAT. ANN. § 54A:5-8 (West 1978).

[99] N.J. STAT. ANN. § 54A:5-2 (West 1978); *General Information Gross Income Tax*, *supra* note 2, No. 23.

[100] *General Information Gross Income Tax*, *supra* note 2, No. 24.

example, capital losses may only be deducted against capital gains and not against other income.[101]

In addition, a taxpayer may not use ordinary or capital losses from one year in a prior or subsequent year since there is no provision for a carryback or carryover of net operating or capital losses.[102]

Deductions

A few deductions are permitted under the Gross Income Tax Act. They include the following which have been incurred after June 30, 1976:

1. Alimony and separate maintenance payments under a court decree includable as income by the recipient, whether or not the recipient is a resident.[103]

2. Medical expenses for the taxpayer, the taxpayer's spouse and dependents in excess of two percent of the taxpayer's total New Jersey gross income.[104] Deductible medical expenses include nonreimbursed payments for physicians, dental and other medical fees, hospital or nursing care, medicines and drugs, prosthetic devices, X-rays, and other diagnostic services made by or directed by a physician or dentist. Also permitted are transportation expenses primarily for and essential to medical care and the cost of medical care insurance.[105]

No deductions are allowed for charitable contributions, taxes or interest paid, or other forms of itemized deductions found in the Internal Revenue Code.[106] Furthermore, an employee cannot deduct business expenses.[107] In the case of a self-employed, since only the net profit of the business is deductible, business expenses are a proper deduction.[108]

Exemptions

Under the Gross Income Tax Act, after a taxpayer computes his New Jersey gross income and claims his deductions, he is permitted certain exemptions. These include the following:

1. Personal exemption of $1,000 for the taxpayer.[109]

---

[101] *Id.* No. 53.
[102] *Id.* No. 77.
[103] N.J. STAT. ANN. § 54A:3-2 (West 1978).
[104] N.J. STAT. ANN. § 54A:3-3 (West 1978).
[105] *General Information Gross Income Tax*, *supra* note 2, No. 66.
[106] *Id.* Nos. 67, 68, 69.
[107] *Id.* No. 75.
[108] *Id.*
[109] N.J. STAT. ANN. § 54A:3-1(a) (West 1978).

2. $1,000 for taxpayer's spouse who does not file separately.[110]

3. $1,000 for each dependent that qualifies as such for federal income tax purposes.[111]

4. An additional $1,000 if the taxpayer is sixty-five years of age, blind, or disabled, or, if the taxpayer is both over sixty-five years of age and blind or disabled, an additional $2,000.[112]

5. An additional $1,000 if the taxpayer's spouse is over sixty-five years of age, blind or disabled, or, if the taxpayer's spouse is both sixty-five years of age and blind or disabled, an additional $2,000 [113]

6. Separate legislation (A. 2137) added another $1,000 exemption for each dependent child under age twenty-two who is attending an accredited post-secondary institution of higher eduction on a full-time basis and for whom the taxpayer paid one-half or more of tuition costs and maintenance of his attendance.

A partial-year resident of New Jersey must prorate his personal exemptions in accordance with the percentage obtained by dividing the number of months he was in New Jersey by twelve. For this purpose fifteen days or more constitutes a month. A nonresident must prorate the exemptions on the basis of income subject to tax under the Act to income which would be subject to the tax if he were a resident.[114]

The United States Supreme Court, in *Beggans v. Public Funds For Public Schools* [115] and *Byrne v. Public Funds For Public Schools*,[116] recently affirmed a Third Circuit decision[117] which had held that an additional $1,000 exemption that was provided for each dependent child attending a nonpublic elementary or secondary school unconstitutional.

Credits

Under the Gross Income Tax Act, after a taxpayer reduces his income by his exemptions and deductions, he then computes his tax. After his tax has been computed, he is entitled to certain credits:

---

[110] N.J. STAT. ANN. § 54A:3-1(b)1 (West 1978).

[111] N.J. STAT. ANN. § 54A:3-1(b)2 (West 1978).

[112] N.J. STAT. ANN. § 54A:3-1(b)3, (b)4 (West 1978).

[113] N.J. STAT. ANN. § 54A:3-1(b)4, (b)6 (West 1978).

[114] N.J. STAT. ANN. § 54A:3-1(c), (d) (West 1978).

[115] 47 U.S.L.W. 3769 (U.S. May 29, 1979) (No. 78-1553), *mem., aff'g,* Public Funds For Public Schools v. Byrne, 590 F.2d 514 (3d Cir.).

[116] 47 U.S.L.W. 3769 (U.S. May 29, 1979) (No. 78-1556), *mem., aff'g,* Public Funds For Public Schools v. Byrne, 590 F.2d 514 (3d Cir.).

[117] Public Funds For Public Schools v. Byrne, 590 F.2d 514 (3d Cir. 1979), *aff'd mem. sub nom.,* Beggans v. Public Funds For Public Schools, 47 U.S.L.W. 3769 (U.S. May 29, 1979) (No. 78-1553), Byrne v. Public Funds For Public Schools, 47 U.S.L.W. 3769 (U.S. May, 29, 1979) (No. 78-1556).

1. Credit for income or wage taxes paid to other states determined by a proration formula.[118]

2. Credit for taxes withheld or estimated tax payments.[119]

3. Tenants credit of $65 to a qualified residential tenant or shareholder in a cooperative.[120]

4. An additional $35 tenants credit if—

   A. Permanently and totally disabled, or

   B. Sixty-five years of age or over, or

   C. A surviving spouse of a person over sixty-five years of age who remains unmarried since becoming a widow or widower at an age of fifty-five or over.[121]

5. Married couples filing separately get one-half of the tenants credit and nonmarrieds sharing quarters share the credit.[122]

Filing Requirements

Under the Gross Income Tax Act, a single taxpayer, spouses filing joint returns and estates and trusts need not file a return if their gross income for the year is $3,000 or less.[123] Spouses that file separate returns need not file a return if their separate gross income for the year is $1,500 or less.[124] Nonresidents are required to test these amounts in their individual cases by assuming for this limited purpose that they are residents and determining their New Jersey gross income as if in fact they are residents.[125]

If taxpayers file jointly for federal purposes, they must file jointly for New Jersey purposes. If they file separately for federal purposes, they must file separately for New Jersey purposes.[126]

Under the Act, a taxpayer must use the same accounting method and taxable year as he does for federal purposes.[127]

---

[118] N.J. STAT. ANN. § 54A:4-1 (West 1978).

[119] N.J. STAT. ANN. § 54A:4-2 (West 1978).

[120] N.J. STAT. ANN. § 54A:4-3 (West 1978).

[121] *Id.*; *General Information Gross Income Tax, supra* note 2, No. 133.

[122] N.J. STAT. ANN. § 54A:4-3(b), (c) (West 1978); *General Information Gross Income Tax, supra* note 2, No. 134.

[123] N.J. STAT. ANN. § 54A:8-3.1(a) (West 1978).

[124] *Id.*

[125] N.J. STAT. ANN. § 54A:2-4 (West 1978).

[126] N.J. STAT. ANN. § 54A:8-3.1(b), (c) (West 1978).

[127] N.J. STAT. ANN. § 54A:8-3(a) (West 1978).

Estimated Payments

Every individual who files a New Jersey Gross Income Tax return is required to make a declaration of his estimated New Jersey gross income tax if his estimated New Jersey gross income tax can reasonably be expected to be more than $100 in excess of any tax withholdings and credits allowable against his tax, regardless of whether he files a federal declaration of estimated tax for such year.[128] Trusts and estates are not required to file such a declaration.

As with the federal, such estimates are required to be paid on or before April 15, June 15, September 15, and January 15 each year.[129] However, if on or before February 15 of the succeeding taxable year, an individual files his return for which a declaration is required and pays the full amount of the tax shown to be due on the return, the return will be considered the declaration if no declaration were required during the taxable year but is otherwise required on or before January 15.[130]

Declarations of estimated tax by a taxpayer who derives at least two-thirds of his total estimated New Jersey income from farming may be filed at any time prior to January 15 of the succeeding year.[131]

As under the Internal Revenue Code, joint estimates may be filed by a husband and wife.[132]

---

[128] N.J. STAT. ANN. § 54A:8-4(a) (West 1978).
[129] N.J. STAT. ANN. § 54A:8-5(a) (West 1978).
[130] N.J. STAT. ANN. § 54A:8-4(h) (West 1978).
[131] N.J. STAT. ANN. § 54A:8-4(e) (West 1978).
[132] N.J. STAT. ANN. § 54A:8-4(c) (West 1978).