

54A:3-1

LEGISLATIVE HISTORY CHECKLIST
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(Income Tax-- non-residents)

NJSA: 54A:3-1 et al
LAWS OF: 1993 **CHAPTER:** 178
BILL NO: A1071
SPONSOR(S) Bagger
DATE INTRODUCED: March 9, 1993
COMMITTEE: **ASSEMBLY:** Appropriations
SENATE: ---
AMENDED DURING PASSAGE: Yes Assembly Committee Substitute
(4th reprint enacted)
DATE OF PASSAGE: **ASSEMBLY:** March 22, 1992
SENATE: December 17, 1992
DATE OF APPROVAL: July 9, 1993

FOLLOWING STATEMENTS ARE ATTACHED IF AVAILABLE:

SPONSOR STATEMENT: Yes
COMMITTEE STATEMENT: **ASSEMBLY:** Yes 12-3-92 & 5-6-93
SENATE: Yes
FISCAL NOTE: Yes
VETO MESSAGE: No
MESSAGE ON SIGNING: No

FOLLOWING WERE PRINTED:

REPORTS: No
HEARINGS: No

See newspaper clippings--attached:
"Retaliatory tax on commuters signed into law," 7-10-93, Star Ledger.
"Florino retaliates in border war.." 7-10-93, Home News.
"Florino signs retaliatory commuter tax," 7-10-93, Trenton Times.

Supreme Court case mentioned:
Brady v. New York, 607NE2d1060m 61LW3811.

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[FOURTH REPRINT]

ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, Nos. 1071, 2060 and 886

STATE OF NEW JERSEY

ADOPTED DECEMBER 3, 1992

Sponsored by Assemblymen BAGGER, LUSTBADER, AZZOLINA,
IMPREVEDUTO, ROMANO, Collins, Stuhltrager
and Kenny

1 AN ACT concerning the taxation of nonresident taxpayers under
2 the gross income tax, amending N.J.S.54A:3-1, 54A:5-7 and
3 54A:8-3.1, supplementing Title 54A of the New Jersey Statutes
4 and repealing N.J.S.54A:5-5.

5

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

8 1. N.J.S.54A:3-1 is amended to read as follows:

9 54A:3-1. Personal exemptions and deductions. Each taxpayer
10 shall be allowed personal exemptions and deductions against his
11 gross income as follows:

12 (a) Taxpayer. Each taxpayer shall be allowed a personal
13 exemption of \$1,000.00 which may be taken as a deduction from
14 his New Jersey gross income.

15 (b) Additional exemptions. In addition to the personal
16 exemptions allowed in (a), the following additional personal
17 exemptions shall be allowed as a deduction from gross income:

18 1. For the taxpayer's spouse who does not file separately -
19 \$1,000.00.

20 2. For each dependent who qualifies as a dependent of the
21 taxpayer during the taxable year for federal income tax purposes
22 - \$1,500.00.

23 3. Taxpayer 65 years of age or over at the close of the taxable
24 year - \$1,000.00.

25 4. Taxpayer's spouse 65 years of age or over at the close of
26 the taxable year - \$1,000.00.

27 5. Blind or disabled taxpayer - \$1,000.00.

28 6. Blind or disabled spouse - \$1,000.00.

29 (c) Special Rule. The personal exemptions allowed under this
30 section shall be limited to that percentage which the total
31 number of months within a taxpayer's taxable year under this act
32 bears to 12. For this purpose 15 days or more shall constitute a
33 month.

34 (d) [Nonresidents. A nonresident taxpayer shall be allowed the
35 same deduction for personal exemptions as a resident taxpayer.
36 However, if (1) the nonresident's gross income which is subject to
37 tax under this act is exceeded by (2) his gross income which he
38 would be required to report under this act if he were a resident
39 by more than \$100.00, his deduction for personal exemptions shall

EXPLANATION--Matter enclosed in bold-faced type in this bill is the
above bill is not enacted and is intended to be omitted in the law.

Matter underlined above is new matter.

Matter enclosed in bold-faced type in this bill has been adopted as follows:

1 Senate floor vote: passed February 18, 1992.

2 Assembly floor vote: passed May 1, 1992.

3 Senate floor vote: passed February 18, 1992.

4 Assembly floor vote: passed May 1, 1992.

1 be limited by the percentage which (1) is to (2).] (Deleted by
2 amendment, P.L. , c.)

3 (cf: P.L.1990, c.61, s.13)

4 2. N.J.S.54A:5-7 is amended to read as follows:

5 54A:5-7. Allocations of income of nonresidents. Where a
6 nonresident taxpayer earns, receives or acquires income from
7 sources partly within and partly without this State or engages in a
8 business, trade, profession or occupation partly within and partly
9 without this State, and, as a result thereof or for other reasons
10 that portion of the income [derived] from [or connected with]
11 sources within this State cannot readily or accurately be
12 ascertained, the director may by regulation prescribe uniform
13 rules for apportionment or allocation of so much of such
14 taxpayer's income as fairly and equitably represents income,
15 derived from sources within this State and subject to tax under
16 this act.

17 (cf: N.J.S.54A:5-7)

18 3. N.J.S.54A:8-3.1 is amended to read as follows:

19 54A:8-3.1 Persons required to file. a. On or before the filing
20 date prescribed in section 1 of this chapter (N.J.S.54A:8-1), an
21 income tax return shall be made and filed by or for an individual,
22 whether filing as unmarried or determining tax pursuant to
23 subsection a. of N.J.S.54A:2-1, an estate or trust, having a gross
24 income in excess of \$3,000.00, and by or for a married couple
25 filing a joint return and having joint gross income in excess of
26 \$3,000.00 (\$1,500.00 or more in the case of a married person
27 filing separately).

28 b. If the income tax liability of husband and wife is determined
29 on a separate return for federal income tax purposes, they shall
30 each also file a separate return for New Jersey income tax
31 purposes and their income tax liabilities under this act shall be
32 separate.

33 c. If the income tax liabilities of husband and wife, both
34 residents, are determined on a joint return for federal income tax
35 purposes, they shall also file a joint return for New Jersey income
36 tax purposes and their tax liabilities under this act shall be joint
37 and several.

38 d. If either husband or wife is a resident and the other is a
39 nonresident, they shall file separate tax returns under this act on
40 such single or separate forms as may be required by the director
41 in which event their tax liabilities shall be separate unless both
42 elect to determine their joint taxable income as if both were
43 residents, in which event their liabilities shall be joint and several.

44 e. The return for any deceased individual shall be made and
45 filed by his fiduciary or other person charged with his property.

46 f. The return for an individual who is unable to make a return
47 by reason of minority or other disability shall be made and filed
48 by his fiduciary or other person charged with the care of his
49 person or property (other than a receiver in possession of only a
50 part of his property), or by his duly authorized agent.

51 g. Any tax under this act, and any increase, interest or penalty
52 thereon, shall, from the time it is due and payable, be a personal
53 debt of the person liable to pay the same, to the State of New
54 Jersey.

1 h. If both husband and wife are nonresidents but only one
2 spouse earns, receives or acquires income from sources within
3 this State, they shall file separate forms as may be required by
4 the director and their tax liabilities shall be separate, unless both
5 elect to determine their joint taxable income in accord with
6 N.J.S.54A:5-7 and their liabilities under this act shall be joint and
7 several.

8 (cf: P.L.1990, c.61, s.15)

9 4. (New section) Notwithstanding the provisions of
10 N.J.S.54A:2-1, the tax due for each taxable year from a
11 nonresident taxpayer shall be equal to the tax computed pursuant
12 to N.J.S.54A:2-1 as if such nonresident were a resident,
13 multiplied by a fraction, the numerator of which is the
14 taxpayer's income from sources within this State determined in
15 accordance with the provisions of N.J.S.54A:5-7 and
16 N.J.S.54A:5-8 and the denominator of which is that taxpayer's
17 gross income for the taxable year as if such taxpayer were a
18 resident.

19 5. N.J.S.54A:5-5 is repealed.

20 6. This act shall take effect immediately ²[¹,but remain
21 inoperative until the enactment of P.L. ,c. (now pending
22 before the Legislature as Senate, No. 1164),¹]² ⁴[³,but remain
23 inoperative until the enactment of P.L. ,c. (now pending
24 before the Legislature as Senate, No. 1164 of 1992),³]⁴ and apply
25 to taxable years beginning on and after January 1, 1993.

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30 _____
31 Requires nonresident payers of gross income tax to compute
32 liability as though residents then prorate liability by proportion of
New Jersey source income to total income.

ASSEMBLY, No. 1071
STATE OF NEW JERSEY

INTRODUCED MARCH 9, 1992

By Assemblymen BAGGER and LUSTBADER

1 AN ACT concerning the taxation of nonresident taxpayers under
2 the gross income tax, amending N.J.S.54A:3-1 and 54A:5-7,
3 supplementing Title 54A of the New Jersey Statutes and
4 repealing N.J.S.54A:5-5.

5

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

8 1. N.J.S.54A:3-1 is amended to read as follows:

9 54A:3-1. Personal exemptions and deductions. Each taxpayer
10 shall be allowed personal exemptions and deductions against his
11 gross income as follows:

12 (a) Taxpayer. Each taxpayer shall be allowed a personal
13 exemption of \$1,000.00 which may be taken as a deduction from
14 his New Jersey gross income.

15 (b) Additional exemptions. In addition to the personal
16 exemptions allowed in (a), the following additional personal
17 exemptions shall be allowed as a deduction from gross income:

18 1. For the taxpayer's spouse who does not file
19 separately--\$1,000.00.

20 2. For each dependent who qualifies as a dependent of the
21 taxpayer during the taxable year for federal income tax
22 purposes--\$1,500.00.

23 3. Taxpayer 65 years of age or over at the close of the taxable
24 year--\$1,000.00.

25 4. Taxpayer's spouse 65 years of age or over at the close of
26 the taxable year--\$1,000.00.

27 5. Blind or disabled taxpayer--\$1,000.00.

28 6. Blind or disabled spouse--\$1,000.00.

29 (c) Special Rule. The personal exemptions allowed under this
30 section shall be limited to that percentage which the total
31 number of months within a taxpayer's taxable year under this act
32 bears to 12. For this purpose fifteen days or more shall constitute
33 a month.

34 (d) [Nonresidents. A nonresident taxpayer shall be allowed the
35 same deduction for personal exemptions as a resident taxpayer.
36 However, if (1) the nonresident's gross income which is subject to
37 tax under this act is exceeded by (2) his gross income which he
38 would be required to report under this act if he were a resident
39 by more than \$100.00, his deduction for personal exemptions shall
40 be limited by the percentage which (1) is to (2)] (Deleted by
41 amendment, P.L. . c. .).

42 (cf: P.L.1990, c.61, s.13)

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 2. N.J.S.54A:5-7 is amended to read as follows:
2 54A:5-7. Allocations of income of nonresidents. Where a
3 nonresident taxpayer earns, receives or acquires income from
4 sources partly within and partly without this State or engages in a
5 business, trade, profession or occupation partly within and partly
6 without this State, and, as a result thereof or for other reasons
7 that portion of the income [derived] from [or connected with]
8 sources within this State cannot readily or accurately be
9 ascertained, the director may by regulation prescribe uniform
10 rules for apportionment or allocation of so much of such
11 taxpayer's income as fairly and equitably represents income,
12 derived from sources within this State and subject to tax under
13 this act.

14 (cf: N.J.S.54A:5-7)

15 3. (New section) a. The tax due for each taxable year from a
16 nonresident taxpayer shall be equal to the tax computed pursuant
17 to N.J.S.54A:2-1 as if such nonresident were a resident except as
18 modified by the provisions of subsection b. of this section.
19 multiplied by a fraction, the numerator of which is the
20 taxpayer's gross income from sources within this State
21 determined in accordance with the provisions of N.J.S.54A:5-7
22 and 54A:5-8 and the denominator of which is that taxpayer's
23 gross income for the taxable year as if such taxpayer were a
24 resident except as modified by the provisions of subsection b. of
25 this section.

26 b. For the purpose of computing the tax pursuant to
27 N.J.S.54A:2-1 as if a nonresident taxpayer were a resident, the
28 gross income used in such computation shall not include income
29 of a taxpayer's spouse who has no income from sources within
30 this State, as defined in N.J.S.54A:5-8; provided however, that if
31 the nonresident taxpayer's spouse has no income from sources
32 within New Jersey, 50% of the income derived from property that
33 is owned jointly with the spouse shall not be included in the
34 nonresident taxpayer's gross income for the purpose of
35 calculating the tax.

36 4. (New section) For the purpose of computing the tax of a
37 nonresident taxpayer pursuant to N.J.S.54A:2-1 as if such
38 nonresident were a resident, the amount of the personal
39 exemptions allowed as a deduction pursuant to N.J.S.54A:3-1 and
40 section 1 of P.L.1976. c.84 (C.54A:3-1.1) and the amount of the
41 deductions for alimony and separate maintenance payments
42 allowed pursuant to N.J.S.54A:3-2 and for medical expenses
43 allowed pursuant to N.J.S.54A:3-3, shall be determined by
44 multiplying the sum of those deductions by a fraction, the
45 numerator of which is the taxpayer's gross income for the
46 taxable year as if the nonresident taxpayer were a resident as
47 modified by the provisions of subsection b. of section 3 of P.L. .
48 c. (C) (now pending before the Legislature as this bill), and
49 the denominator of which is the taxpayer's gross income for the
50 taxable year as if the nonresident taxpayer were a resident.

51 5. N.J.S.54A:5-5 is repealed.

52 6. This act shall take effect immediately and apply to taxable
53 years ending after its enactment.

STATEMENT

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This bill changes the method by which nonresident taxpayers will determine their New Jersey gross income tax on their New Jersey source income. Nonresidents of this State with New Jersey source income will compute their appropriate tax as if they were State residents, upon all income from whatever source, and then prorate that liability by the ratio of their New Jersey source income to all their taxable income as if a New Jersey resident. This method of determining a nonresident's gross income tax liability by a factor of New Jersey source income to all income imposes tax only upon New Jersey source income, although it allows the State to consider out-of-State income and that income's relation to the nonresident's ability to pay tax in determining of the rate of tax paid.

Under this bill a nonresident taxpayer with New Jersey source income will first compute tax as if a State resident, and then prorate that liability by the ratio of New Jersey source income to all taxable income. While this method of determining the income tax liability of nonresident taxpayers is similar to the method used under several other states' individual income tax laws, including New York, it is more fair and consistent than those other systems. Under the bill a taxpayer's total income is used to determine the tax rate; however, the out-of-state income of a taxpayer's spouse who has no income from New Jersey is not considered for the purpose of computing the gross income tax.

Requires nonresident payers of gross income tax to compute liability as though residents then prorate liability by proportion of New Jersey source income to total income.

ASSEMBLY APPROPRIATIONS COMMITTEE

STATEMENT TO

ASSEMBLY COMMITTEE SUBSTITUTE FOR

ASSEMBLY, Nos. 1071, 2060 and 886

STATE OF NEW JERSEY

DATED: DECEMBER 3, 1992

The Assembly Appropriations Committee reports favorably Assembly Bill Nos. 1071, 2060 and 886 by committee substitute.

This Assembly Committee Substitute for Assembly Bill Nos. 1071, 2060 and 886 changes the method by which nonresident taxpayers will determine their New Jersey gross income tax on their New Jersey source income. Nonresidents of this State with New Jersey source income will compute their appropriate tax as if they were State residents, upon all income from whatever source, and then prorate that liability by the ratio of their New Jersey source income to all their taxable income as if a New Jersey resident. This method of determining a nonresident's gross income tax liability by a factor of New Jersey source income to all income imposes tax only upon New Jersey source income, although it allows the State to consider out-of-State income and that income's relation to the nonresident's ability to pay tax in determining of the rate of tax paid.

Under this substitute a nonresident taxpayer with New Jersey source income will first compute tax as if a State resident, and then prorate that liability by the ratio of New Jersey source income to all taxable income. This method of determining the income tax liability of nonresident taxpayers is the same as the method used under several other states' individual income tax laws, including New York. Under the substitute a taxpayer's total income is used to determine the tax rate and, if a married couple files jointly, the total out-of-state family income is considered for the purpose of computing the gross income tax rate.

This substitute is identical to Senate Bill Nos. 335, 346 and 427(Scs).

FISCAL IMPACT:

This substitute will increase State revenues from the gross income tax. The Division of Taxation estimates that the annual increase in revenues will be approximately \$27 million.

ASSEMBLY APPROPRIATIONS COMMITTEE

STATEMENT TO

[FIRST REPRINT]

ASSEMBLY COMMITTEE SUBSTITUTE FOR

ASSEMBLY, Nos. 1071, 2060 and 886

with Assembly committee amendments

STATE OF NEW JERSEY

DATED: MAY 6, 1993

The Assembly Appropriations Committee reports favorably Assembly Bill Nos. 1071, 2060 and 886 (ACS/1R), with committee amendments.

Assembly Bill Nos. 1071, 2060 and 886 (ACS/1R), as amended, changes the method by which nonresident taxpayers will determine their New Jersey gross income tax on their New Jersey source income. Nonresidents of this State with New Jersey source income will compute their appropriate tax as if they were State residents, upon all income from whatever source, and then prorate that liability by the ratio of their New Jersey source income to all their taxable income as if a New Jersey resident. This method of determining a nonresident's gross income tax liability by a factor of New Jersey source income to all income imposes tax only upon New Jersey source income, although it allows the State to consider out-of-State income and that income's relation to the nonresident's ability to pay tax in determining of the rate of tax paid.

Under this bill a nonresident taxpayer with New Jersey source income will first compute tax as if a State resident, and then prorate that liability by the ratio of New Jersey source income to all taxable income. This method of determining the income tax liability of nonresident taxpayers is the same as the method used under several other states' personal income tax laws, including New York. Under the bill a taxpayer's total income is used to determine the tax rate and, if a married couple files jointly, the total out-of-state family income is considered for the purpose of computing the gross income tax rate.

FISCAL IMPACT:

This bill will increase State revenues from the gross income tax. The Division of Taxation estimates that the annual increase in revenues will be approximately \$27 million.

COMMITTEE AMENDMENTS:

The amendments remove the restriction which conditions the operation of the bill on enactment of Senate Bill No. 1164 of 1992, which was a supplemental appropriation for \$15 million.

LEGISLATIVE FISCAL ESTIMATE TO
ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, Nos. 1071, 2060 and 886

STATE OF NEW JERSEY

DATED: December 28, 1992

The Assembly Committee Substitute for Assembly Bill Nos. 1071, 2060 and 886 of 1992 changes the method by which nonresident taxpayers determine their New Jersey gross income tax on their New Jersey source income. Nonresidents of this State with New Jersey source income will first compute their appropriate tax as if they were State residents, upon all income from whatever source. The nonresident taxpayer then prorates that liability by the ratio of New Jersey source income to all taxable income. Under the substitute a taxpayer's total income is used to determine the tax rate and, if a married couple files jointly, the total out-of-state family income is considered for the purpose of computing the gross income tax rate. The substitute applies to taxpayer taxable years beginning on and after January 1, 1993; the bulk of the first returns and payments subject to the new method will be due in April of 1994.

The Office of Legislative Services (OLS) notes that without specific data concerning the New Jersey source and total income of nonresident taxpayers it is not possible to determine the expected revenue increase to the State. However, in testimony before the Senate Budget and Appropriations Committee, the Division of Taxation presented the estimate that enactment of the substitute would be expected to increase revenue for Fiscal Year 1994 by approximately \$27 million. OLS has no information that would lead it to dispute that estimate.

This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67.