

54A: 5-1

LEGISLATIVE HISTORY CHECKLIST

NJSA: 54A: 5-1, 54A: 6-21

(Income tax-deferred compensation plan-exempt employee's contribution)

LAWS OF: 1983

CHAPTER: 571

Bill No: A3251

Sponsor(s): Janiszewski and others

Date Introduced: March 14, 1983

Committee: Assembly: Revenue, Finance and Appropriations

Senate: Revenue, Finance and Appropriations

Amended during passage: Yes Amendments during passage denoted by asterisks

Date of Passage: Assembly: June 20, 1983

Senate: December 12, 1983

Date of Approval: January 17, 1984

Following statements are attached if available:

Sponsor statement: Yes

Committee statement: Assembly Yes

Senate Yes

Fiscal Note: No

Veto Message: No

Message on Signing: No

Following were printed:

Reports: No

Hearings: No

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ASSEMBLY, No. 3251

STATE OF NEW JERSEY

INTRODUCED MARCH 14, 1983

By Assemblymen JANISZEWSKI, ROCCO, HAINES, HARDWICK,
VAN WAGNER, ZANGARI, DEVERIN and LESNIAK

AN ACT concerning certain exclusions from gross income, amending
N. J. S. 54A:5-1 and supplementing Chapter 6 of Title 54A of the
New Jersey Statutes.

1 BE IT ENACTED *by the Senate and General Assembly of the State*
2 *of New Jersey:*

1 1. N. J. S. 54A:5-1 is amended to read as follows:

2 54A:5-1. New Jersey Gross Income Defined. New Jersey gross
3 income shall consist of the following categories of income:

4 a. Salaries, wages, tips, fees, commissions, bonuses, and other
5 remuneration received for services rendered whether in cash or in
6 property;

7 b. Net profits from business. The net income from the opera-
8 tion of a business, profession, **or** other activity, after **[provi-*
9 *sions]* *provision** for all costs and expenses incurred in the
10 conduct thereof, determined either on a cash or accrual basis in
11 accordance with the method of accounting allowed for federal in-
12 come tax purposes but without deduction of taxes based on income;

13 c. Net gains or income from disposition of property. Net gains
14 or net income, less net losses, derived from the sale, exchange or
15 other disposition of property, including real or personal, whether
16 tangible or intangible as determined in accordance with the method
17 of accounting allowed for federal income tax purposes. For the
18 purpose of determining gain or loss, the basis of property shall be
19 the adjusted basis used for federal income tax purposes.

20 For the tax year 1976, any taxpayer with a tax liability under

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 printed in italics *thus* is new matter.

Matter enclosed in asterisks or stars has been adopted as follows:

*—Assembly committee amendments adopted May 5, 1983.

**—Senate committee amendment adopted December 8, 1983.

21 this subsection, or under the "Tax on Capital Gains and Other
 22 Unearned Income Act" (P. L. 1975, c. 172), shall not be subject
 23 to payment of an amount greater than the amount he would have
 24 paid if either return had covered all capital transactions during
 25 the full tax year 1976; provided, however, that the rate which
 26 shall apply to any capital gain shall be that in effect on the date
 27 of the transaction. To the extent that any loss is used to offset
 28 any gain under P. L. 1975, c. 172*,* it shall not be used to offset
 29 any gain under the "New Jersey Gross Income Tax Act" (P. L.
 30 1976, c. 47).

31 The term "net gains or income" shall not include gains or in-
 32 come derived from obligations which are referred to in ***[clauses]***
 33 **clause** (1) or (2) of section 54A:6-14 of this act. The term "net
 34 gains or net income" shall not include gains or income from trans-
 35 actions to the extent to which nonrecognition is allowed for federal
 36 income tax purposes. The term "sale, exchange or other disposi-
 37 tion" shall not include the exchange of stock or securities in a
 38 corporation a party to a reorganization in pursuance of a plan of
 39 reorganization, solely for stock or securities in such corporation or
 40 in another corporation a party to the reorganization and the trans-
 41 fer of property to a corporation by one or more persons solely in
 42 exchange for stock or securities in such corporation if immediately
 43 after the exchange such person or persons are in control of the
 44 corporation. For purposes of this clause, stock or securities issued
 45 for services shall not be considered as issued in return for property.

46 For purposes of this clause, the term "reorganization" means—

- 47 (i) A statutory merger or consolidation;
- 48 (ii) The acquisition by one corporation, in exchange solely for
 49 all or a part of its voting stock (or in exchange solely for all or a
 50 part of the voting stock of a corporation which is in control of the
 51 acquiring corporation) of stock of another corporation if, immedi-
 52 ately after the acquisition, the acquiring corporation has control
 53 of such other corporation (whether or not such acquiring corpora-
 54 tion had control immediately before the acquisition);
- 55 (iii) The acquisition by one corporation, in exchange solely for
 56 all or part of its voting stock (or in exchange solely for all or a
 57 part of the voting stock of a corporation which is in control of the
 58 acquiring corporation), of substantially all of the properties of
 59 another corporation, but in determining whether the exchange is
 60 solely for stock the assumption by the acquiring corporation of a
 61 liability of the other, or the fact that property acquired is subject
 62 to a liability, shall be disregarded;
- 63 (iv) A transfer by a corporation of all or a part of its assets to
 64 another corporation if immediately after the transfer the trans-

65 feror, or one or more of its shareholders (including persons who
66 were shareholders immediately before the transfer), or any com-
67 bination thereof, is in control of the corporation to which the assets
68 are transferred;

69 (v) A recapitalization;

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

72 (vii) The acquisition by one corporation, in exchange for stock
73 of a corporation (referred to in this subclause as "controlling
74 corporation") which is in control of the acquiring corporation,
75 ***[or]*** *of* substantially all of the properties of another corpora-
76 tion which in the transaction is merged into the acquiring corpora-
77 tion shall not disqualify a transaction under subclause (i) if such
78 transaction would have qualified under subclause (i) if the merger
79 had been into the controlling corporation, and no stock of the
80 acquiring corporation is used in the transaction;

81 (viii) A transaction otherwise qualifying under subclause (i)
82 shall not be disqualified by reason of the fact that stock of a cor-
83 poration (referred to in this subclause as the "controlling corpo-
84 ration") which before the merger was in control of the merged
85 corporation is used in the transaction, if after the transaction, the
86 corporation surviving the merger holds substantially all of its
87 properties and of the properties of the merged corporation (other
88 than stock of the controlling corporation distributed in the trans-
89 action); and in the transaction, former shareholders of the sur-
90 viving corporation exchanged, for an amount of voting stock of
91 the controlling corporation, an amount of stock in the surviving
92 corporation which constitutes control of such corporation.

93 For purposes of this clause, the term "control" means the own-
94 ership of stock possessing at least 80% of the total combined voting
95 power of all classes of stock entitled to vote and at least 80% of
96 the total number of shares of all other classes of stock of the
97 corporation.

98 For purposes of this clause, the term "a party to a reorganiza-
99 tion" includes a corporation resulting from a reorganization, and
100 both corporations, in the case of a reorganization resulting from
101 the acquisition by one corporation of stock or properties of another.
102 In the case of a reorganization qualifying under subclause (i) by
103 reason of subclause (vii) the term "a party to a reorganization"
104 includes the controlling corporation referred to in such subclause
105 (vii).

106 Notwithstanding any provisions hereof, upon every such ex-
107 change or conversion, the taxpayer's base for the stock or securi-
108 ties received shall be the same as the taxpayer's actual or attributed

109 base for the stock, securities or property surrendered in exchange
110 therefor.

111 d. Net gains or net income derived from or in the form of rents,
112 royalties, ~~patents~~ *patents*, and copyrights.

113 e. Interest, except interest referred to in ~~clauses~~ *clause*
114 (1) or (2) of N. J. S. 54A:6-14, or interest on savings certificates
115 issued pursuant to the provisions of Chapter 6 of this act.

116 f. Dividends. "Dividends" means any distribution in cash or
117 property made by a corporation, association or business trust,
118 (1) out of accumulated earnings and profits, or (2) out of earn-
119 ings and profits of the year in which such dividend is paid.

120 g. Gambling winnings.

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

122 i. Income in respect of a decedent.

123 j. ~~Pensions~~ *Amounts distributed or withdrawn from an em-*
124 *ployee trust attributable to contributions to the trust which were*
125 *excluded from gross income under the provisions of chapter 6 of*
126 *Title 54A of the New Jersey Statutes and pensions and annuities*
127 *except to the extent of exclusions in section 54A:6-10 hereunder,*
128 *notwithstanding the provisions of N. J. S. 18A:66-51, P. L. 1973,*
129 *c. 140, s. 41 (C. 43:6A-41), P. L. 1954, C. 84, s. 53 (C. 43:15A-53),*
130 *P. L. 1944, c. 255, s. 17 (C. 43:16A-17), P. L. 1965, C. 89, s. 45 (C.*
131 *53:5A-45), R. S. 43:10-14, P. L. 1943, C. 160, s. 22 (C. 43:10-18.22),*
132 *P. L. 1948, c. 310, s. 22 (C. 43:10-18.71), P. L. 1954, c. 218, c. 32*
133 *(C. 43:13-22.34), P. L. 1964, c. 275, s. 11 (C. 43:13-22.60), R. S.*
134 *43:10-57, P. L. 1938, c. 330, s. 13 (C. 43:10-105), R. S. 43:13-44*
135 *and, P. L. 1943, c. 189, s. 5 (C. 43:13-37.5).*

136 k. Distributive share of partnership income.

137 l. Amounts received as prizes and awards, except as provided in
138 ~~section~~ *sections* 54A:6-8 and 54A:6-11 hereunder.

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

141 n. Alimony and separate maintenance payments to the extent that
142 such payments are required to be made under a decree of divorce
143 or separate maintenance but not including payments for support of
144 minor children.

1 2. (New section) Contributions to certain employee trusts. Gross
2 income shall not include amounts contributed by an employer on
3 behalf of *and at the election of* an employee ~~pursuant to~~ *to*
4 *a trust which is part of a qualified cash or deferred arrangement*
5 *which meets the requirements of* Section 401(k) of the 1954
6 Internal Revenue Code, as amended.

1 3. This act shall take effect ~~immediately~~ *January 1,*
2 *1984*.

ASSEMBLY REVENUE, FINANCE AND APPROPRIATIONS
COMMITTEE

STATEMENT TO
ASSEMBLY, No. 3251
with committee amendment

STATE OF NEW JERSEY

DATED: MAY 5, 1983

Assembly Bill No. 3251 exempts from gross income, for income tax purposes, the amount an employer contributes in behalf of employees to an employer-sponsored tax deferred plan for retirement. The proposal would conform the present State statute to Section 401(k) of the Internal Revenue Code.

FISCAL IMPACT:

The Division of Taxation states that there are no available data to offer a reasonable estimate; however, it was stated that this may result in a \$1 million loss in revenue. Some of the lost revenue may be recaptured, after retirement or withdrawal from the trusts in future years. The division commented that these types of plans are only one of many which, if in the future receive the same treatment, could result in revenue losses that could be quite substantial.

COMMITTEE AMENDMENTS:

The committee amendments were technical in nature for more precise compliance with the definition of Section 401(k) of the Internal Revenue Code.

SENATE REVENUE, FINANCE AND APPROPRIATIONS
COMMITTEE

STATEMENT TO
ASSEMBLY, No. 3251

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with committee amendments

STATE OF NEW JERSEY

DATED: DECEMBER 1, 1983

Assembly Bill No. 3251 OCR exempts from gross income, for income tax purposes, the amount an employer contributes on behalf of employees to an employer-sponsored tax deferred retirement plan. The proposal would conform the treatment of such contributions to their treatment under the provisions of the Internal Revenue Code.

FISCAL IMPACT:

The Division of Taxation states that there are no available data to offer a reasonable estimate; however, it was stated that this may result in a \$1 million loss in revenue. Some of the lost revenue may be recaptured, after retirement or withdrawal from the trusts in future years.

Committee amendments make the bill effective January 1, 1984.

SPONSOR'S STATEMENT

Section 401(k) of the Internal Revenue Code was enacted to encourage employees to save for their retirement. Under this, a worker can agree to contribute a portion of his income into an employer sponsored plan. The employee contributions as well as the interest and earnings are not subject to federal income tax until the employee begins receiving the income, generally after retirement.

All states except New Jersey and Pennsylvania have conformed their state laws to follow the federal law in allowing tax-deferment for Section 401 (k) plans. This bill will bring New Jersey's law into conformity with the Federal tax law.

A3251 (1983)