

54A:5-1 et. al.

LEGISLATIVE HISTORY CHECKLIST

NJSA 54A:5-1 et. al.  
Laws of 1977 Chapter 40 (Income Tax--Exclusion  
of Pension Income)

Bill No. S1709

Sponsor(s) Merlino

Date Introduced October 7, 1976

Committee: Assembly Taxation

Senate Revenue, Finance & Appropriations

Amended during passage Yes ~~NO~~ Amendments during  
Date of passage: Assembly Feb. 17, 1977 passage denoted by  
asterisks

Senate Feb. 14, 1977

Date of approval March 16, 1977

Following statements are attached if available:

Sponsor statement Yes ~~NO~~

Committee Statement: Assembly Yes ~~NO~~

Senate Yes ~~NO~~

Fiscal Note Yes ~~NO~~

Veto message Yes ~~NO~~

Message on signing Yes ~~NO~~

Following were printed:

Reports Yes ~~NO~~

Hearings Yes ~~NO~~

Cited in Sponsor's Statement:

Attorney General's Formal Opinion No. 26-1976

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## SENATE, No. 1709

## STATE OF NEW JERSEY

INTRODUCED OCTOBER 7, 1976

By Senator MERLINO

Referred to Committee on Revenue, Finance and Appropriations

AN ACT concerning certain exclusions from gross income under the New Jersey Gross Income Tax Act, **\*\*[and]\*\*** amending sections 54A:5-1 **[.]** **\*\*and\*\*** 54A:6-10 and **\*\*repealing\*\*** 54A:6-12 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 provision  
9 for all costs and expenses incurred in the conduct thereof, deter-  
10 mined either on a cash or accrual basis in accordance with the  
11 method of accounting allowed for Federal income tax purposes but  
12 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  
17A purpose of determining gain or loss, the basis of property shall be  
17B the adjusted basis used for Federal income tax purposes.

18 **\*\*\*\****For the tax year 1976, any taxpayer with a tax liability under*  
18A *this subsection, or under the "Tax on Capital Gains and Other*  
18C *Unearned Income Act" (P. L. 1975, c. 172), shall not be subject*  
18D *to payment of an amount greater than the amount he would have*  
18E *paid if either return had covered all capital transactions during*  
18F *the full tax year 1976; provided, however, that the rate which*

**EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.**

19 shall apply to any capital gain shall be that in effect on the date  
19A of the transaction. To the extent that any loss is used to offset  
19B any gain under (P. L. 1975, c. 172) it shall not be used to offset  
19C any gain under the "New Jersey Gross Income Tax Act" (P. L.  
19D 1976, c. 47).\*\*\*\*

20 The term "net gains or income" shall not include gains or in-  
21 come derived from obligations which are referred to in clauses (1)  
22 or (2) of section 54A:6-14 of this act. The term "net gains or net in-  
23 come" shall not include gains or income from transactions to the  
24 extent to which nonrecognition is allowed for Federal income tax  
25 purposes. The term "sale, exchange or other disposition" shall not  
26 include the exchange of stock or securities in a corporation a party  
27 to a reorganization in pursuance of a plan of reorganization, solely  
28 for stock or securities in such corporation or in another corporation  
29 a party to the reorganization and the transfer of property to a  
30 corporation by one or more persons solely in exchange for stock or  
31 securities in such corporation if immediately after the exchange  
32 such person or persons are in control of the corporation. For  
33 purposes of this clause, stock or securities issued for services shall  
34 not be considered as issued in return for property.

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

36 (i) A statutory merger or consolidation;

37 (ii) The acquisition by one corporation, in exchange solely for  
38 all or a part of its voting stock (or in exchange solely for all or a  
39 part of the voting stock of a corporation which is in control of the  
40 acquiring corporation) of stock of another corporation if, immedi-  
41 ately after the acquisition, the acquiring corporation has control  
42 of such other corporation (whether or not such acquiring corpora-  
43 tion had control immediately before the acquisition);

44 (iii) The acquisition by one corporation, in exchange solely for  
45 all or a part of its voting stock (or in exchange solely for all or a  
46 part of the voting stock of a corporation which is in control of the  
47 acquiring corporation), of substantially all of the properties of  
48 another corporation, but in determining whether the exchange is  
49 solely for stock the assumption by the acquiring corporation of a  
50 liability of the other, or the fact that property acquired is subject  
51 to a liability, shall be disregarded;

52 (iv) A transfer by a corporation of all or a part of its assets to  
53 another corporation if immediately after the transfer the trans-  
54 feror, or one or more of its shareholders (including persons who  
55 were shareholders immediately before the transfer), or any com-  
56 bination thereof, is in control of the corporation to which the assets  
57 are transferred;

58 (v) A recapitalization;

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

61 (vii) The acquisition by one corporation, in exchange for stock  
62 of a corporation (referred to in this subclause as "controlling  
63 corporation") which is in control of the acquiring corporation, of  
64 substantially all of the properties of another corporation which in  
65 the transaction is merged into the acquiring corporation shall not  
66 disqualify a transaction under subclause (i) if such transaction  
67 would have qualified under subclause (i) if the merger had been  
68 into the controlling corporation, and no stock of the acquiring cor-  
69 poration, is used in the transaction;

70 (viii) A transaction otherwise qualifying under subclause (i)  
71 shall not be disqualified by reason of the fact that stock of a cor-  
72 poration (referred to in this subclause as the "controlling corpora-  
73 tion") which before the merger was in control of the merged  
74 corporation is used in the transaction, if after the transaction, the  
75 corporation surviving the merger holds substantially all of its  
76 properties and of the properties of the merged corporation (other  
77 than stock of the controlling corporation distributed in the trans-  
78 action); and in the transaction, former shareholders of the sur-  
79 viving corporation exchanged, for an amount of voting stock of  
80 the controlling corporation, an amount of stock in the surviving  
81 corporation which constitutes control of such corporation.

82 For purposes of this clause, the term "control" means the own-  
83 ership of stock possessing at least 80% of the total combined voting  
84 power of all classes of stock entitled to vote and at least 80% of  
85 the total number of shares of all other classes of stock of the cor-  
86 poration.

87 For purposes of this clause, the term "a party to a reorganiza-  
88 tion" includes a corporation resulting from a reorganization, and  
89 both corporations, in the case of a reorganization resulting from  
90 the acquisition by one corporation of stock or properties of another.  
91 In the case of a reorganization qualifying under subclause (i) by  
92 reason of subclause (vii) the term "a party to a reorganization"  
93 includes the controlling corporation referred to in such subclause  
94 (vii).

95 Notwithstanding any provisions hereof, upon every such ex-  
96 change or conversion, the taxpayer's base for the stock or securi-  
97 ties received shall be the same as the taxpayer's actual or attributed  
98 base for the stock, securities or property surrendered in exchange  
99 therefor.

100 (d) Net gains or net income derived from or in the form of  
101 rents, royalties, patents, and copyrights.

102 (e) Interest, except interest referred to in clauses (1) or (2) of  
103 section 54A:6-14 of this act.

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

108 (g) Gambling winnings.

109 (h) Net gains or income derived through estates or trusts.

110 (i) Income in respect of a decedent.

111 (j) Pensions and annuities *except* to the extent [that the  
112 proceeds exceed the contributions made by the taxpayer *[as*  
113 *provided]* *of exclusions* in **\*\*[sections]\*\*** **\*\*section\*\*** 54A:6-10  
114 *and* **\*\*[54A:6-12]\*\*** *hereunder, notwithstanding the provisions of*  
115 *N. J. S. 18A:66-51, P. L. 1973, \*\*\*\*[c. 304]\*\*\*\* \*\*\*\*c. 140\*\*\*\*,*  
116 *s. 41 (C. 43:6A-41), P. L. 1954, c. 84, s. 53 (C. 43:15A-53), P. L.*  
117 *1944, c. 255, s. 17 (C. 43:16A-17), and P. L. 1965, c. 89, s. 45*  
118 *(C. 53:5A-45).*\*

118A Distributive share of partnership income.

119 (l) Amounts received as prizes and awards, except as provided  
120 in sections 54A:6-8 and 54A:6-11 hereunder.

121 (m) Rental value of a residence furnished by an employer or a  
122 rental allowance paid by an employer to provide a home.

123 (n) Alimony and separate maintenance payments to the extent  
124 that such payments are required to be made under a decree of  
125 divorce or separate maintenance but not including payments for  
126 support of minor children.

1 2. N. J. S. 54A:6-10 is amended to read as follows:

2 54A:6-10. Pensions and annuities. Gross income shall not in-  
3 clude [that part of any amount] **\*\*[amounts]\*\*** *that part of any*  
4 *amount* received as an annuity under an annuity, endowment, or  
5 life insurance contract [which bears the same ratio to such amount  
6 as the investment in the contract (as of the annuity starting date)  
7 bears to the expected return under the contract (as of such date).  
8 Where (1) part of the consideration for an annuity, endowment, or  
9 life insurance contract is contributed by the employer, and (2) dur-  
10 ing the 3-year period beginning on the date on which an  
11 amount is first received under the contract as an annuity, the  
12 aggregate amount receivable by the employee under the terms of  
13 the contract is equal to or greater than the consideration for the  
14 contract contributed by the employee, then all amounts received  
15 as an annuity under the contract shall be excluded from gross

16 income until there has been so excluded an amount equal to the  
17 consideration for the contract contributed by the employee] \**[or*  
18 *amounts received as pension, disability or retirement benefits,*  
19 *under any public or private plan, whether the consideration therefor*  
20 *is contributed by the employee or employer or both, to the extent*  
21 *of \$10,000.00 in any one year]\* \*which bears the same ratio to*  
22 *such amount as the investment in the contract as of the annuity*  
23 *starting date bears to the expected return under the contract as of*  
24 *such date. Where (1) part of the consideration for an annuity,*  
25 *endowment, or life insurance contract is contributed by the em-*  
26 *ployer, and (2) during the 3-year period beginning on the date on*  
27 *which an amount is first received under the contract as an annuity,*  
28 *the aggregate amount receivable by the employee under the terms*  
29 *of the contract is equal to or greater than the consideration for the*  
30 *contract contributed by the employee, then all amounts received*  
31 *as an annuity under the contract shall be excluded from gross*  
32 *income until there has been so excluded an amount equal to the*  
33 *consideration for the contract contributed by the employee.*

34 *\*\*\*\*[\*\*In addition to that part of any amount received as an*  
35 *annuity which is excludable from gross income as herein provided,*  
36 *gross income shall not include payments of \$7,500.00 for a married*  
37 *couple filing jointly, \$3,750.00 for a married person filing separately,*  
38 *or \$5,000.00 for a single taxpayer, received as an annuity, endow-*  
39 *ment or life insurance contract, or payments of such amounts or*  
40 *less for each class of taxpayer as heretofore designated, which are*  
41 *received as pension, disability or retirement benefits under any*  
42 *public or private plan, whether the consideration therefor is con-*  
43 *tributed by the employee or employer or both, provided that the*  
44 *taxpayer either by virtue of age or disability is or would be eligible*  
45 *to receive payments under the Federal Social Security Act.\*\*]\*\*\*\**

46 *\*\*\*\*In addition to that part of any amount received as an an-*  
47 *nuity which is excludable from gross income as herein provided,*  
48 *gross income shall not include payments of up to \$10,000.00 for*  
49 *a married couple filing jointly, \$5,000.00 for a married person*  
50 *filing separately or \$7,500.00 for a single taxpayer, which are re-*  
51 *ceived as an annuity, endowment or life insurance contract, or*  
52 *payments of any such amounts which are received as pension,*  
53 *disability, or retirement benefits, under any public or private plan,*  
54 *whether the consideration therefor is contributed by the employee*  
55 *or employer or both, by any person who, either by virtue of age*  
56 *or disability, is or would be eligible to receive payments under*  
57 *the Federal Social Security Act.\*\*\*\**

58 *Gross income shall not include any amount received under any*  
 59 *public or private plan by reason of a permanent and total*  
 60 *disability\*.*

1 3. N. J. S. 54A:6-12 is **\*\*[amended to read as follows:]\*\***  
 1A **\*\*hereby repealed.\*\***

2 **\*\*[54A:6-12. Pensions of persons not covered under Social**  
 3 **Security. [Gross] In addition to the exclusion provided under**  
 4 **N. J. S. 54A:6-10\*[, gross income shall not include pension, dis-**  
 5 **ability or retirement programs of the Federal Government or of any**  
 6 **State or its political subdivisions, or agencies thereof, for persons**  
 7 **not covered under 54A:6-2 or 54A:6-3 hereof; provided, however,**  
 8 **that the total amount of benefits to be allowed exclusion herein shall**  
 9 **not be in excess of the maximum amount of benefits payable to and**  
 10 **allowable for exclusion in 54A:6-2 and 54A:6-3]\* \*any taxpayer**  
 11 **not covered under 54A:6-2 or 54A:6-3, but who would be eligible**  
 12 **in any year to receive payments under such act if he or she were**  
 13 **covered thereby, shall be allowed an exclusion from his or her gross**  
 14 **income in such year the amount of \$3,000.00 for a single taxpayer**  
 15 **or a married taxpayer filing separately and the amount of \$6,000.00**  
 16 **for a married taxpayer filing a joint return\*.]\*\***

1 4. This act shall take effect immediately and shall be retroactive  
 2 to **\*\*[July 1, 1976]\*\*** **\*\*\*[\*\*January 1, 1977\*\*]\*\*\*** **\*\*\*July 1,**  
 3 **1976\*\*\*** **\*\*\*\*except that with respect to payments heretofore de-**  
 4 **clared exempt from the act to which this act is amendatory by**  
 5 **virtue of the provisions of N. J. S. 18A:66-51, P. L. 1973, c. 140,**  
 6 **section 41 (C. 43:6A-41), P. L. 1954, c. 84, section 53 (C. 43:15A-53),**  
 7 **P. L. 1944, c. 255, section 17 (C. 43:16A-17) and P. L. 1965, c. 89,**  
 8 **section 45 (C. 53:5A-45), this act shall be effective retroactive to**  
 9 **January 1, 1977.\*\*\*\***

SENATE, No. 1709

STATE OF NEW JERSEY

INTRODUCED OCTOBER 7, 1976

By Senator MERLINO

Referred to Committee on Revenue, Finance and Appropriations

AN ACT concerning certain exclusions from gross income under the New Jersey Gross Income Tax Act, and amending sections 54A:5-1, 54A:6-10 and 54A:6-12 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 provision  
9 for all costs and expenses incurred in the conduct thereof, deter-  
10 mined either on a cash or accrual basis in accordance with the  
11 method of accounting allowed for Federal income tax purposes but  
12 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 The term "net gains or income" shall not include gains or in-  
21 come derived from obligations which are referred to in clauses (1)  
22 or (2) of section 54A:6-14 of this act. The term "net gains or net in-  
23 come" shall not include gains or income from transactions to the  
24 extent to which nonrecognition is allowed for Federal income tax

**EXPLANATION**—Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.



25 purposes. The term "sale, exchange or other disposition" shall not  
26 include the exchange of stock or securities in a corporation a party  
27 to a reorganization in pursuance of a plan of reorganization, solely  
28 for stock or securities in such corporation or in another corporation  
29 a party to the reorganization and the transfer of property to a  
30 corporation by one or more persons solely in exchange for stock or  
31 securities in such corporation if immediately after the exchange  
32 such person or persons are in control of the corporation. For  
33 purposes of this clause, stock or securities issued for services shall  
34 not be considered as issued in return for property.

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

36 (i) A statutory merger or consolidation;

37 (ii) The acquisition by one corporation, in exchange solely for  
38 all or a part of its voting stock (or in exchange solely for all or a  
39 part of the voting stock of a corporation which is in control of the  
40 acquiring corporation) of stock of another corporation if, immedi-  
41 ately after the acquisition, the acquiring corporation has control  
42 of such other corporation (whether or not such acquiring corpora-  
43 tion had control immediately before the acquisition);

44 (iii) The acquisition by one corporation, in exchange solely for  
45 all or a part of its voting stock (or in exchange solely for all or a  
46 part of the voting stock of a corporation which is in control of the  
47 acquiring corporation), of substantially all of the properties of  
48 another corporation, but in determining whether the exchange is  
49 solely for stock the assumption by the acquiring corporation of a  
50 liability of the other, or the fact that property acquired is subject  
51 to a liability, shall be disregarded;

52 (iv) A transfer by a corporation of all or a part of its assets to  
53 another corporation if immediately after the transfer the trans-  
54 feror, or one or more of its shareholders (including persons who  
55 were shareholders immediately before the transfer), or any com-  
56 bination thereof, is in control of the corporation to which the assets  
57 are transferred;

58 (v) A recapitalization;

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

61 (vii) The acquisition by one corporation, in exchange for stock  
62 of a corporation (referred to in this subclause as "controlling  
63 corporation") which is in control of the acquiring corporation, of  
64 substantially all of the properties of another corporation which in  
65 the transaction is merged into the acquiring corporation shall not  
66 disqualify a transaction under subclause (i) if such transaction

67 would have qualified under subclause (i) if the merger had been  
68 into the controlling corporation, and no stock of the acquiring cor-  
69 poration, is used in the transaction;

70 (viii) A transaction otherwise qualifying under subclause (i)  
71 shall not be disqualified by reason of the fact that stock of a cor-  
72 poration (referred to in this subclause as the "controlling corpora-  
73 tion") which before the merger was in control of the merged  
74 corporation is used in the transaction, if after the transaction, the  
75 corporation surviving the merger holds substantially all of its  
76 properties and of the properties of the merged corporation (other  
77 than stock of the controlling corporation distributed in the trans-  
78 action); and in the transaction, former shareholders of the sur-  
79 viving corporation exchanged, for an amount of voting stock of  
80 the controlling corporation, an amount of stock in the surviving  
81 corporation which constitutes control of such corporation.

82 For purposes of this clause, the term "control" means the own-  
83 ership of stock possessing at least 80% of the total combined voting  
84 power of all classes of stock entitled to vote and at least 80% of  
85 the total number of shares of all other classes of stock of the cor-  
86 poration.

87 For purposes of this clause, the term "a party to a reorganiza-  
88 tion" includes a corporation resulting from a reorganization, and  
89 both corporations, in the case of a reorganization resulting from  
90 the acquisition by one corporation of stock or properties of another.  
91 In the case of a reorganization qualifying under subclause (i) by  
92 reason of subclause (vii) the term "a party to a reorganization"  
93 includes the controlling corporation referred to in such subclause  
94 (vii).

95 Notwithstanding any provisions hereof, upon every such ex-  
96 change or conversion, the taxpayer's base for the stock or securi-  
97 ties received shall be the same as the taxpayer's actual or attributed  
98 base for the stock, securities or property surrendered in exchange  
99 therefor.

100 (d) Net gains or net income derived from or in the form of  
101 rents, royalties, patents, and copyrights.

102 (e) Interest, except interest referred to in clauses (1) or (2) of  
103 section 54A:6-14 of this act.

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

108 (g) Gambling winnings.

109 (h) Net gains or income derived through estates or trusts.

110 (i) Income in respect of a decedent.

111 (j) Pensions and annuities to the extent **【**that the proceeds ex-  
112 ceed the contributions made by the taxpayer**】** *as provided in*  
113 *sections 54A:6-10 and 54A:6-12.*

114 (k) Distributive share of partnership income.

115 (l) Amounts received as prizes and awards, except as provided  
116 in sections 54A:6-8 and 54A:6-11 hereunder.

117 (m) Rental value of a residence furnished by an employer or a  
118 rental allowance paid by an employer to provide a home.

119 (n) Alimony and separate maintenance payments to the extent  
120 that such payments are required to be made under a decree of  
121 divorce or separate maintenance but not including payments for  
122 support of minor children.

1 2. N. J. S. 54A:6-10 is amended to read as follows:

2 54A:6-10. Pensions and annuities. Gross income shall not in-  
3 clude **【**that part of any amount**】** *amounts* received as an annuity  
4 under an annuity, endowment, or life insurance contract **【**which  
5 bears the same ratio to such amount as the investment in the  
6 contract (as of the annuity starting date) bears to the expected  
7 return under the contract (as of such date). Where (1) part of the  
8 consideration for an annuity, endowment, or life insurance contract  
9 is contributed by the employer, and (2) during the 3-year period  
10 beginning on the date on which an amount is first received under  
11 the contract as an annuity, the aggregate amount receivable by  
12 the employee under the terms of the contract is equal to or greater  
13 than the consideration for the contract contributed by the em-  
14 ployee, then all amounts received as an annuity under the contract  
15 shall be excluded from gross income until there has been so excluded  
16 an amount equal to the consideration for the contract contributed  
17 by the employee**】** *or amounts received as pension, disability or*  
18 *retirement benefits, under any public or private plan, whether the*  
19 *consideration therefor is contributed by the employee or employer*  
20 *or both, to the extent of \$10,000.00 in any one year.*

1 3. N. J. S. 54A:6-12 is amended to read as follows:

2 54A:6-12. Pensions of persons not covered under Social Security.  
3 **【Gross】** *In addition to the exclusion provided under N. J. S.*  
4 *54A:6-10, gross income shall not include pension, disability or re-*  
5 *tirement programs of the Federal Government or of any State or*  
6 *its political subdivisions, or agencies thereof, for persons not*  
7 *covered under 54A:6-2 or 54A:6-3 hereof; provided, however, that*  
8 *the total amount of benefits to be allowed exclusion herein shall not*

9 be in excess of the maximum amount of benefits payable to and  
10 allowable for exclusion in 54A:6-2 and 54A:6-3.

1 4. This act shall take effect immediately and shall be retroactive  
2 to July 1, 1976.

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STATEMENT

This bill would exclude from gross income under the New Jersey Gross Income Tax Act amounts of State aid private plan pension benefits or annuities to the extent of \$10,000.00. This would subject such benefits over \$10,000.00, whether the consideration therefor is contributed by the employee or employer or both, to taxation under the act.

SENATE REVENUE, FINANCE AND  
APPROPRIATIONS COMMITTEE

STATEMENT TO  
**SENATE, No. 1709**  
with Committee amendments

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**STATE OF NEW JERSEY**

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DATED: JANUARY 24, 1977

This bill proposes to amend the New Jersey Gross Income Tax Act with regard to pension income, addressing the taxability of public pensions, providing an exclusion of pension income received on account of a permanent and total disability, and establishing a stated amount for exclusion where a taxpayer is not eligible for Social Security or Railroad retirement payments.

The exemption of public pensions provided for under the statutes creating such pension plans, including the Teacher Pension and Annuity Fund, the State Police Retirement System, the Police and Fireman's Retirement System, the Judicial Pension System and the Public Employee's Retirement System, is not operable for purposes of the New Jersey Gross Income Tax Act. Thus all pension plans, both public and private, are taxable under the State income tax act. It is this Committee's opinion that the Legislature's intent, in originally adopting the New Jersey Gross Income Tax Act, was to treat public and private pension plans in the same manner. In that the Attorney General, through Formal Opinion Number 26 - 1976, has determined that public pensions, where exemption from taxation is provided for in the statutes creating the public pension plan, are not includable as income because the income tax act does not specifically render that exclusion inoperable, the Committee has specifically included such public pension income as part of gross income through amendment of 54A :5-1(j).

To calculate the amount of pension income which is taxable, the amount of Social Security, or equivalent amount where the taxpayer is not eligible for Social Security, together with the amount representing return of investment, is subtracted from total pension income and the result is the amount of pension income which is taxable. To that deduction is added the \$2,000.00 personal deduction for each taxpayer 65 or older. It is estimated that the aggregate exclusion has the effect

of excluding the first \$8,000.00/10,000.00 in pension income from the State income tax. This is viewed by the committee as a reasonable exclusion and will render most pension payments received by the average New Jersey citizen nontaxable.

#### COMMITTEE AMENDMENTS

Amendments were found necessary to specifically cite the statutes providing the exemption of public pensions to render those sections inoperable for purposes of the gross income tax.

An additional amendment to that section of the income tax act addressing pensions and annuities (54A:6-10) has been included by the committee. This amendment provides for the exclusion of pension income received by reason of a permanent and total disability.

Further amendments address an administrative problem. The act currently allows an exclusion from gross income for taxpayers not qualified for social security payments in an amount which they would receive were they eligible. This provision requires a calculation of benefits otherwise receivable obtainable only through the Social Security Administration. Rather than require a taxpayer to obtain that information, an assumption of \$3,000.00 is made for each taxpayer. Thus the flat sum applies rather than requiring the exact calculation. This will make administration of that section much easier and will help qualified taxpayers as well.

#### EFFECTIVE DATE

This bill is effective immediately and is retroactive to July 1, 1976, that being the start of the income period for reporting under the New Jersey Gross Income Tax Act.

SENATE COMMITTEE AMENDMENTS TO  
**SENATE, No. 1709**

**STATE OF NEW JERSEY**

ADOPTED JANUARY 24, 1977

Amend page 4, section 1, line 111, after "annuities", insert "except".

Amend page 4, section 1, line 112, delete "as provided", insert "of exclusions".

Amend page 4, section 1, line 113, after "54A:6-12", insert "hereunder, notwithstanding the provisions of N. J. S. 18A:36-51, P. L. 1973, c. 304, s. 41 (C. 43:6A-41), P. L. 1954, c. 84, s. 53 (C. 43:15A-53), P. L. 1944, c. 255, s. 17 (C. 43:16A-17), and P. L. 1965, c. 89, s. 45 (C. 53:5A-45)."

Amend page 4, section 2, line 3, delete "amounts", and insert "that part of any amount".

Amend page 4, section 2, lines 17-20, after "employee]", omit remainder of line 17, all of lines 18 and 19 and "or both, to the extent of \$10,000.00 in any one year" on line 20; insert "which bears the same ratio to such amount as the investment in the contract, as of the annuity starting date, bears to the expected return under the contract as of such date. Where (1) part of the consideration for an annuity, endowment, or life insurance contract is contributed by the employer, and (2) during the 3-year period beginning on the date on which an amount is first received under the contract as an annuity, the aggregate amount receivable by the employee under the terms of the contract is equal to or greater than the consideration for the contract contributed by the employee, then all amounts received as an annuity under the contract shall be excluded from gross income until there has been so excluded an amount equal to the consideration for the contract contributed by the employee.

Gross income shall not include any amount received under any public or private plan by reason of a permanent and total disability."

Amend pages 4-5, section 3, lines 4-10, after "54A:6-10", omit remainder of line 4, all of lines 5-9 and "allowable for exclusion in 54A:6-2 and 54A:6-3" on line 10; insert "any taxpayer not covered under 54A:6-2 or 54A:6-3, but who would be eligible in any year to receive payments under such act if he or she were covered thereby, shall be allowed an exclusion from his or her gross income in such year the amount of \$3,000.00 for a single taxpayer or a married taxpayer filing separately and the amount of \$6,000.00 for a married taxpayer filing a joint return."

[OFFICIAL COPY REPRINT]

SENATE, No. 1709

STATE OF NEW JERSEY

INTRODUCED OCTOBER 7, 1976

By Senator MERLINO

Referred to Committee on Revenue, Finance and Appropriations

AN ACT concerning certain exclusions from gross income under the New Jersey Gross Income Tax Act, and amending sections 54A:5-1, 54A:6-10 and 54A:6-12 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 provision  
9 for all costs and expenses incurred in the conduct thereof, deter-  
10 mined either on a cash or accrual basis in accordance with the  
11 method of accounting allowed for Federal income tax purposes but  
12 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 The term "net gains or income" shall not include gains or in-  
21 come derived from obligations which are referred to in clauses (1)  
22 or (2) of section 54A:6-14 of this act. The term "net gains or net in-  
23 come" shall not include gains or income from transactions to the  
24 extent to which nonrecognition is allowed for Federal income tax

**EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.**



25 purposes. The term "sale, exchange or other disposition" shall not  
26 include the exchange of stock or securities in a corporation a party  
27 to a reorganization in pursuance of a plan of reorganization, solely  
28 for stock or securities in such corporation or in another corporation  
29 a party to the reorganization and the transfer of property to a  
30 corporation by one or more persons solely in exchange for stock or  
31 securities in such corporation if immediately after the exchange  
32 such person or persons are in control of the corporation. For  
33 purposes of this clause, stock or securities issued for services shall  
34 not be considered as issued in return for property.

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

36 (i) A statutory merger or consolidation;

37 (ii) The acquisition by one corporation, in exchange solely for  
38 all or a part of its voting stock (or in exchange solely for all or a  
39 part of the voting stock of a corporation which is in control of the  
40 acquiring corporation) of stock of another corporation if, immedi-  
41 ately after the acquisition, the acquiring corporation has control  
42 of such other corporation (whether or not such acquiring corpora-  
43 tion had control immediately before the acquisition);

44 (iii) The acquisition by one corporation, in exchange solely for  
45 all or a part of its voting stock (or in exchange solely for all or a  
46 part of the voting stock of a corporation which is in control of the  
47 acquiring corporation), of substantially all of the properties of  
48 another corporation, but in determining whether the exchange is  
49 solely for stock the assumption by the acquiring corporation of a  
50 liability of the other, or the fact that property acquired is subject  
51 to a liability, shall be disregarded;

52 (iv) A transfer by a corporation of all or a part of its assets to  
53 another corporation if immediately after the transfer the trans-  
54 feror, or one or more of its shareholders (including persons who  
55 were shareholders immediately before the transfer), or any com-  
56 bination thereof, is in control of the corporation to which the assets  
57 are transferred;

58 (v) A recapitalization;

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

61 (vii) The acquisition by one corporation, in exchange for stock  
62 of a corporation (referred to in this subclause as "controlling  
63 corporation") which is in control of the acquiring corporation, of  
64 substantially all of the properties of another corporation which in  
65 the transaction is merged into the acquiring corporation shall not  
66 disqualify a transaction under subclause (i) if such transaction

67 would have qualified under subclause (i) if the merger had been  
68 into the controlling corporation, and no stock of the acquiring cor-  
69 poration, is used in the transaction;

70 (viii) A transaction otherwise qualifying under subclause (i)  
71 shall not be disqualified by reason of the fact that stock of a cor-  
72 poration (referred to in this subclause as the "controlling corpora-  
73 tion") which before the merger was in control of the merged  
74 corporation is used in the transaction, if after the transaction, the  
75 corporation surviving the merger holds substantially all of its  
76 properties and of the properties of the merged corporation (other  
77 than stock of the controlling corporation distributed in the trans-  
78 action); and in the transaction, former shareholders of the sur-  
79 viving corporation exchanged, for an amount of voting stock of  
80 the controlling corporation, an amount of stock in the surviving  
81 corporation which constitutes control of such corporation.

82 For purposes of this clause, the term "control" means the own-  
83 ership of stock possessing at least 80% of the total combined voting  
84 power of all classes of stock entitled to vote and at least 80% of  
85 the total number of shares of all other classes of stock of the cor-  
86 poration.

87 For purposes of this clause, the term "a party to a reorganiza-  
88 tion" includes a corporation resulting from a reorganization, and  
89 both corporations, in the case of a reorganization resulting from  
90 the acquisition by one corporation of stock or properties of another.  
91 In the case of a reorganization qualifying under subclause (i) by  
92 reason of subclause (vii) the term "a party to a reorganization"  
93 includes the controlling corporation referred to in such subclause  
94 (vii).

95 Notwithstanding any provisions hereof, upon every such ex-  
96 change or conversion, the taxpayer's base for the stock or securi-  
97 ties received shall be the same as the taxpayer's actual or attributed  
98 base for the stock, securities or property surrendered in exchange  
99 therefor.

100 (d) Net gains or net income derived from or in the form of  
101 rents, royalties, patents, and copyrights.

102 (e) Interest, except interest referred to in clauses (1) or (2) of  
103 section 54A:6-14 of this act.

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

108 (g) Gambling winnings.

- 109 (h) Net gains or income derived through estates or trusts.
- 110 (i) Income in respect of a decedent.
- 111 (j) Pensions and annuities *\*except\** to the extent [that the  
 112 proceeds exceed the contributions made by the taxpayer *\*[as*  
 113 *provided]* *\*of exclusions\* in sections 54A:6-10 and 54A:6-12*  
 114 *\*hereunder, notwithstanding the provisions of N. J. S. 18A:66-51,*  
 115 *P. L. 1973, c. 304, s. 41 (C. 43:6A-41), P. L. 1954, c. 84, s. 53*  
 116 *(C. 43:15A-53), P. L. 1944, c. 255, s. 17 (C. 43:16A-17), and*  
 117 *P. L. 1965, c. 89, s. 45 (C. 53:5A-45).\**
- 118 Distributive share of partnership income.
- 119 (l) Amounts received as prizes and awards, except as provided  
 120 in sections 54A:6-8 and 54A:6-11 hereunder.
- 121 (m) Rental value of a residence furnished by an employer or a  
 122 rental allowance paid by an employer to provide a home.
- 123 (n) Alimony and separate maintenance payments to the extent  
 124 that such payments are required to be made under a decree of  
 125 divorce or separate maintenance but not including payments for  
 126 support of minor children.

1 2. N. J. S. 54A:6-10 is amended to read as follows:

2 54A:6-10. Pensions and annuities. Gross income shall not in-  
 3 clude [that part of any amount] *\*[amounts]\* \*that part of any*  
 4 *amount\** received as an annuity under an annuity, endowment, or  
 5 life insurance contract [which bears the same ratio to such amount  
 6 as the investment in the contract (as of the annuity starting date)  
 7 bears to the expected return under the contract (as of such date).  
 8 Where (1) part of the consideration for an annuity, endowment, or  
 9 life insurance contract is contributed by the employer, and (2) dur-  
 10 ing the 3-year period beginning on the date on which an  
 11 amount is first received under the contract as an annuity, the  
 12 aggregate amount receivable by the employee under the terms of  
 13 the contract is equal to or greater than the consideration for the  
 14 contract contributed by the employee, then all amounts received  
 15 as an annuity under the contract shall be excluded from gross  
 16 income until there has been so excluded an amount equal to the  
 17 consideration for the contract contributed by the employee] *\*[or*  
 18 *amounts received as pension, disability or retirement benefits,*  
 19 *under any public or private plan, whether the consideration therefor*  
 20 *is contributed by the employee or employer or both, to the extent*  
 21 *of \$10,000.00 in any one year]\* \*which bears the same ratio to*  
 22 *such amount as the investment in the contract as of the annuity*  
 23 *starting date bears to the expected return under the contract as of*  
 24 *such date. Where (1) part of the consideration for an annuity,*

25 *endowment, or life insurance contract is contributed by the em-*  
26 *ployer, and (2) during the 3-year period beginning on the date on*  
27 *which an amount is first received under the contract as an annuity,*  
28 *the aggregate amount receivable by the employee under the terms*  
29 *of the contract is equal to or greater than the consideration for the*  
30 *contract contributed by the employee, then all amounts received*  
31 *as an annuity under the contract shall be excluded from gross*  
32 *income until there has been so excluded an amount equal to the*  
33 *consideration for the contract contributed by the employee.*

34 *Gross income shall not include any amount received under any*  
35 *public or private plan by reason of a permanent and total*  
36 *disability\*.*

1 3. N. J. S. 54A:6-12 is amended to read as follows:

2 54A:6-12. Pensions of persons not covered under Social Security.  
3 **[Gross]** *In addition to the exclusion provided under N. J. S.*  
4 *54A:6-10\***[**, gross income shall not include pension, disability or re-*  
5 *irement programs of the Federal Government or of any State or*  
6 *its political subdivisions, or agencies thereof, for persons not*  
7 *covered under 54A:6-2 or 54A:6-3 hereof; provided, however, that*  
8 *the total amount of benefits to be allowed exclusion herein shall not*  
9 *be in excess of the maximum amount of benefits payable to and*  
10 *allowable for exclusion in 54A:6-2 and 54A:6-3<sup>\*</sup> \*any taxpayer*  
11 *not covered under 54A:6-2 or 54A:6-3, but who would be eligible*  
12 *in any year to receive payments under such act if he or she were*  
13 *covered thereby, shall be allowed an exclusion from his or her gross*  
14 *income in such year the amount of \$3,000.00 for a single taxpayer*  
15 *or a married taxpayer filing separately and the amount of \$6,000.00*  
16 *for a married taxpayer filing a joint return\*.*

1 4. This act shall take effect immediately and shall be retroactive  
2 to July 1, 1976.

SENATE AMENDMENTS TO  
**SENATE, No. 1709**  
[OFFICIAL COPY REPRINT]

—◆—  
**STATE OF NEW JERSEY**  
—◆—

ADOPTED FEBRUARY 7, 1977

Amend page 1, title, line 2, omit "and".

Amend page 1, title, line 3, omit ",", insert "and"; after "54A :6-10, and", insert "repealing".

Amend page 4, section 1, line 113, omit "sections", insert "section"; omit "and 54A :6-12".

Amend page 5, section 2, line 33, after line 33 insert new paragraph as follows :

"In addition to that part of any amount received as an annuity which is excludable from gross income as herein provided, gross income shall not include payments of \$7,500.00 for a married couple filing jointly, \$3,750.00 for a married person filing separately, or \$5,000.00 for a single taxpayer, received as an annuity, endowment or life insurance contract, or payments of such amounts or less for each class of taxpayer as heretofore designated, which are received as pension, disability or retirement benefits under any public or private plan, whether the consideration therefor is contributed by the employee or employer or both, provided that the taxpayer either by virtue of age or disability is or would be eligible to receive payments under the Federal Social Security Act."

Amend page 5, section 3, line 1, omit "amended to read as follows:", insert "hereby repealed."

Amend page 5, section 3, lines 2-16, omit.

Amend page 5, section 4, line 2, omit "July 1, 1976", insert "January 1, 1977".

[SECOND OFFICIAL COPY REPRINT]

SENATE, No. 1709

STATE OF NEW JERSEY

INTRODUCED OCTOBER 7, 1976

By Senator MERLINO

Referred to Committee on Revenue, Finance and Appropriations

AN ACT concerning certain exclusions from gross income under the New Jersey Gross Income Tax Act, **[and]** amending sections 54A:5-1 **[,]** **and** 54A:6-10 and **repealing** 54A:6-12 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 provision  
9 for all costs and expenses incurred in the conduct thereof, deter-  
10 mined either on a cash or accrual basis in accordance with the  
11 method of accounting allowed for Federal income tax purposes but  
12 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 The term "net gains or income" shall not include gains or in-  
21 come derived from obligations which are referred to in clauses (1)  
22 or (2) of section 54A:6-14 of this act. The term "net gains or net in-  
23 come" shall not include gains or income from transactions to the  
24 extent to which nonrecognition is allowed for Federal income tax

**EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.**

25 purposes. The term "sale, exchange or other disposition" shall not  
26 include the exchange of stock or securities in a corporation a party  
27 to a reorganization in pursuance of a plan of reorganization, solely  
28 for stock or securities in such corporation or in another corporation  
29 a party to the reorganization and the transfer of property to a  
30 corporation by one or more persons solely in exchange for stock or  
31 securities in such corporation if immediately after the exchange  
32 such person or persons are in control of the corporation. For  
33 purposes of this clause, stock or securities issued for services shall  
34 not be considered as issued in return for property.

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

36 (i) A statutory merger or consolidation;

37 (ii) The acquisition by one corporation, in exchange solely for  
38 all or a part of its voting stock (or in exchange solely for all or a  
39 part of the voting stock of a corporation which is in control of the  
40 acquiring corporation) of stock of another corporation if, immedi-  
41 ately after the acquisition, the acquiring corporation has control  
42 of such other corporation (whether or not such acquiring corpora-  
43 tion had control immediately before the acquisition);

44 (iii) The acquisition by one corporation, in exchange solely for  
45 all or a part of its voting stock (or in exchange solely for all or a  
46 part of the voting stock of a corporation which is in control of the  
47 acquiring corporation), of substantially all of the properties of  
48 another corporation, but in determining whether the exchange is  
49 solely for stock the assumption by the acquiring corporation of a  
50 liability of the other, or the fact that property acquired is subject  
51 to a liability, shall be disregarded;

52 (iv) A transfer by a corporation of all or a part of its assets to  
53 another corporation if immediately after the transfer the trans-  
54 feror, or one or more of its shareholders (including persons who  
55 were shareholders immediately before the transfer), or any com-  
56 bination thereof, is in control of the corporation to which the assets  
57 are transferred;

58 (v) A recapitalization;

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

61 (vii) The acquisition by one corporation, in exchange for stock  
62 of a corporation (referred to in this subclause as "controlling  
63 corporation") which is in control of the acquiring corporation, of  
64 substantially all of the properties of another corporation which in  
65 the transaction is merged into the acquiring corporation shall not  
66 disqualify a transaction under subclause (i) if such transaction

67 would have qualified under subclause (i) if the merger had been  
68 into the controlling corporation, and no stock of the acquiring cor-  
69 poration, is used in the transaction;

70 (viii) A transaction otherwise qualifying under subclause (i)  
71 shall not be disqualified by reason of the fact that stock of a cor-  
72 poration (referred to in this subclause as the "controlling corpora-  
73 tion") which before the merger was in control of the merged  
74 corporation is used in the transaction, if after the transaction, the  
75 corporation surviving the merger holds substantially all of its  
76 properties and of the properties of the merged corporation (other  
77 than stock of the controlling corporation distributed in the trans-  
78 action); and in the transaction, former shareholders of the sur-  
79 viving corporation exchanged, for an amount of voting stock of  
80 the controlling corporation, an amount of stock in the surviving  
81 corporation which constitutes control of such corporation.

82 For purposes of this clause, the term "control" means the own-  
83 ership of stock possessing at least 80% of the total combined voting  
84 power of all classes of stock entitled to vote and at least 80% of  
85 the total number of shares of all other classes of stock of the cor-  
86 poration.

87 For purposes of this clause, the term "a party to a reorganiza-  
88 tion" includes a corporation resulting from a reorganization, and  
89 both corporations, in the case of a reorganization resulting from  
90 the acquisition by one corporation of stock or properties of another.  
91 In the case of a reorganization qualifying under subclause (i) by  
92 reason of subclause (vii) the term "a party to a reorganization"  
93 includes the controlling corporation referred to in such subclause  
94 (vii).

95 Notwithstanding any provisions hereof, upon every such ex-  
96 change or conversion, the taxpayer's base for the stock or securi-  
97 ties received shall be the same as the taxpayer's actual or attributed  
98 base for the stock, securities or property surrendered in exchange  
99 therefor.

100 (d) Net gains or net income derived from or in the form of  
101 rents, royalties, patents, and copyrights.

102 (e) Interest, except interest referred to in clauses (1) or (2) of  
103 section 54A:6-14 of this act.

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

108 (g) Gambling winnings.



109 (h) Net gains or income derived through estates or trusts.

110 (i) Income in respect of a decedent.

111 (j) Pensions and annuities *\*except\** to the extent [that the  
112 proceeds exceed the contributions made by the taxpayer *\*[as*  
113 *provided]* *\*of exclusions\* in **\*\*[sections]\*\*** *\*\*section\*\* 54A:6-10*  
114 *and **\*\*[54A:6-12]\*\*** *\*hereunder, notwithstanding the provisions of*  
115 *N. J. S. 18A:66-51, P. L. 1973, c. 304, s. 41 (C. 43:6A-41), P. L.*  
116 *1954, c. 84, s. 53 (C. 43:15A-53), P. L. 1944, c. 255, s. 17*  
117 *(C. 43:16A-17), and P. L. 1965, c. 89, s. 45 (C. 53:5A-45).\****

118 Distributive share of partnership income.

119 (l) Amounts received as prizes and awards, except as provided  
120 in sections 54A:6-8 and 54A:6-11 hereunder.

121 (m) Rental value of a residence furnished by an employer or a  
122 rental allowance paid by an employer to provide a home.

123 (n) Alimony and separate maintenance payments to the extent  
124 that such payments are required to be made under a decree of  
125 divorce or separate maintenance but not including payments for  
126 support of minor children.

1 2. N. J. S. 54A:6-10 is amended to read as follows:

2 54A:6-10. Pensions and annuities. Gross income shall not in-  
3 clude [that part of any amount] *\*[amounts]\* *that part of any**  
4 *amount\** received as an annuity under an annuity, endowment, or  
5 life insurance contract [which bears the same ratio to such amount  
6 as the investment in the contract (as of the annuity starting date)  
7 bears to the expected return under the contract (as of such date).  
8 Where (1) part of the consideration for an annuity, endowment, or  
9 life insurance contract is contributed by the employer, and (2) dur-  
10 ing the 3-year period beginning on the date on which an  
11 amount is first received under the contract as an annuity, the  
12 aggregate amount receivable by the employee under the terms of  
13 the contract is equal to or greater than the consideration for the  
14 contract contributed by the employee, then all amounts received  
15 as an annuity under the contract shall be excluded from gross  
16 income until there has been so excluded an amount equal to the  
17 consideration for the contract contributed by the employee] *\*[or*  
18 *amounts received as pension, disability or retirement benefits,*  
19 *under any public or private plan, whether the consideration therefor*  
20 *is contributed by the employee or employer or both, to the extent*  
21 *of \$10,000.00 in any one year]\* *which bears the same ratio to**  
22 *such amount as the investment in the contract as of the annuity*  
23 *starting date bears to the expected return under the contract as of*  
24 *such date. Where (1) part of the consideration for an annuity,*

25 endowment, or life insurance contract is contributed by the em-  
 26 ployer, and (2) during the 3-year period beginning on the date on  
 27 which an amount is first received under the contract as an annuity,  
 28 the aggregate amount receivable by the employee under the terms  
 29 of the contract is equal to or greater than the consideration for the  
 30 contract contributed by the employee, then all amounts received  
 31 as an annuity under the contract shall be excluded from gross  
 32 income until there has been so excluded an amount equal to the  
 33 consideration for the contract contributed by the employee.

34 *\*\*In addition to that part of any amount received as an annuity*  
 35 *which is excludable from gross income as herein provided, gross in-*  
 36 *come shall not include payments of \$7,500.00 for a married couple*  
 37 *filing jointly, \$3,750.00 for a married person filing separately, or*  
 38 *\$5,000.00 for a single taxpayer, received as an annuity, endowment*  
 39 *or life insurance contract, or payments of such amounts or less for*  
 40 *each class of taxpayer as heretofore designated, which are received*  
 41 *as pension, disability or retirement benefits under any public or*  
 42 *private plan, whether the consideration therefor is contributed by*  
 43 *the employee or employer or both, provided that the taxpayer either*  
 44 *by virtue of age or disability is or would be eligible to receive pay-*  
 45 *ments under the Federal Social Security Act.\*\**

46 *Gross income shall not include any amount received under any*  
 47 *public or private plan by reason of a permanent and total*  
 48 *disability\*.*

1 3. N. J. S. 54A:6-12 is **\*\*[amended to read as follows:]\*\***  
 1A **\*\*hereby repealed.\*\***

2 **\*\*[54A:6-12. Pensions of persons not covered under Social**  
 3 **Security. [Gross] In addition to the exclusion provided under**  
 4 **N. J. S. 54A:6-10\*[, gross income shall not include pension, dis-**  
 5 **ability or retirement programs of the Federal Government or of any**  
 6 **State or its political subdivisions, or agencies thereof, for persons**  
 7 **not covered under 54A:6-2 or 54A:6-3 hereof; provided, however,**  
 8 **that the total amount of benefits to be allowed exclusion herein shall**  
 9 **not be in excess of the maximum amount of benefits payable to and**  
 10 **allowable for exclusion in 54A:6-2 and 54A:6-3]\* \*\*any taxpayer**  
 11 **not covered under 54A:6-2 or 54A:6-3, but who would be eligible**  
 12 **in any year to receive payments under such act if he or she were**  
 13 **covered thereby, shall be allowed an exclusion from his or her gross**  
 14 **income in such year the amount of \$3,000.00 for a single taxpayer**  
 15 **or a married taxpayer filing separately and the amount of \$6,000.00**  
 16 **for a married taxpayer filing a joint return\*.]\*\***

1 4. This act shall take effect immediately and shall be retroactive  
 2 to **\*\*[July 1, 1976]\*\* \*\*January 1, 1977\*\*.**

SENATE AMENDMENT TO  
**SENATE, No. 1709**  
[SECOND OFFICIAL COPY REPRINT]

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**STATE OF NEW JERSEY**

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ADOPTED FEBRUARY 14, 1977

Amend page 5, section 4, line 2, omit "January 1, 1977", insert "July 1, 1976".

[THIRD OFFICIAL COPY REPRINT]

SENATE, No. 1709

STATE OF NEW JERSEY

INTRODUCED OCTOBER 7, 1976

By Senator MERLINO

Referred to Committee on Revenue, Finance and Appropriations

AN ACT concerning certain exclusions from gross income under the New Jersey Gross Income Tax Act, **\*\*[and]\*\*** amending sections 54A:5-1 **[,]** **\*\*and\*\*** 54A:6-10 and **\*\*repealing\*\*** 54A:6-12 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 provision  
9 for all costs and expenses incurred in the conduct thereof, deter-  
10 mined either on a cash or accrual basis in accordance with the  
11 method of accounting allowed for Federal income tax purposes but  
12 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 The term "net gains or income" shall not include gains or in-  
21 come derived from obligations which are referred to in clauses (1)  
22 or (2) of section 54A:6-14 of this act. The term "net gains or net in-  
23 come" shall not include gains or income from transactions to the  
24 extent to which nonrecognition is allowed for Federal income tax

**EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.**

25 purposes. The term "sale, exchange or other disposition" shall not  
26 include the exchange of stock or securities in a corporation a party  
27 to a reorganization in pursuance of a plan of reorganization, solely  
28 for stock or securities in such corporation or in another corporation  
29 a party to the reorganization and the transfer of property to a  
30 corporation by one or more persons solely in exchange for stock or  
31 securities in such corporation if immediately after the exchange  
32 such person or persons are in control of the corporation. For  
33 purposes of this clause, stock or securities issued for services shall  
34 not be considered as issued in return for property.

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

36 (i) A statutory merger or consolidation;

37 (ii) The acquisition by one corporation, in exchange solely for  
38 all or a part of its voting stock (or in exchange solely for all or a  
39 part of the voting stock of a corporation which is in control of the  
40 acquiring corporation) of stock of another corporation if, immedi-  
41 ately after the acquisition, the acquiring corporation has control  
42 of such other corporation (whether or not such acquiring corpora-  
43 tion had control immediately before the acquisition);

44 (iii) The acquisition by one corporation, in exchange solely for  
45 all or a part of its voting stock (or in exchange solely for all or a  
46 part of the voting stock of a corporation which is in control of the  
47 acquiring corporation), of substantially all of the properties of  
48 another corporation, but in determining whether the exchange is  
49 solely for stock the assumption by the acquiring corporation of a  
50 liability of the other, or the fact that property acquired is subject  
51 to a liability, shall be disregarded;

52 (iv) A transfer by a corporation of all or a part of its assets to  
53 another corporation if immediately after the transfer the trans-  
54 feror, or one or more of its shareholders (including persons who  
55 were shareholders immediately before the transfer), or any com-  
56 bination thereof, is in control of the corporation to which the assets  
57 are transferred;

58 (v) A recapitalization;

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

61 (vii) The acquisition by one corporation, in exchange for stock  
62 of a corporation (referred to in this subclause as "controlling  
63 corporation") which is in control of the acquiring corporation, of  
64 substantially all of the properties of another corporation which in  
65 the transaction is merged into the acquiring corporation shall not  
66 disqualify a transaction under subclause (i) if such transaction

67 would have qualified under subclause (i) if the merger had been  
68 into the controlling corporation, and no stock of the acquiring cor-  
69 poration, is used in the transaction;

70 (viii) A transaction otherwise qualifying under subclause (i)  
71 shall not be disqualified by reason of the fact that stock of a cor-  
72 poration (referred to in this subclause as the "controlling corpora-  
73 tion") which before the merger was in control of the merged  
74 corporation is used in the transaction, if after the transaction, the  
75 corporation surviving the merger holds substantially all of its  
76 properties and of the properties of the merged corporation (other  
77 than stock of the controlling corporation distributed in the trans-  
78 action); and in the transaction, former shareholders of the sur-  
79 viving corporation exchanged, for an amount of voting stock of  
80 the controlling corporation, an amount of stock in the surviving  
81 corporation which constitutes control of such corporation.

82 For purposes of this clause, the term "control" means the own-  
83 ership of stock possessing at least 80% of the total combined voting  
84 power of all classes of stock entitled to vote and at least 80% of  
85 the total number of shares of all other classes of stock of the cor-  
86 poration.

87 For purposes of this clause, the term "a party to a reorganiza-  
88 tion" includes a corporation resulting from a reorganization, and  
89 both corporations, in the case of a reorganization resulting from  
90 the acquisition by one corporation of stock or properties of another.  
91 In the case of a reorganization qualifying under subclause (i) by  
92 reason of subclause (vii) the term "a party to a reorganization"  
93 includes the controlling corporation referred to in such subclause  
94 (vii).

95 Notwithstanding any provisions hereof, upon every such ex-  
96 change or conversion, the taxpayer's base for the stock or securi-  
97 ties received shall be the same as the taxpayer's actual or attributed  
98 base for the stock, securities or property surrendered in exchange  
99 therefor.

100 (d) Net gains or net income derived from or in the form of  
101 rents, royalties, patents, and copyrights.

102 (e) Interest, except interest referred to in clauses (1) or (2) of  
103 section 54A:6-14 of this act.

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

108 (g) Gambling winnings.

109 (h) Net gains or income derived through estates or trusts.

110 (i) Income in respect of a decedent.

111 (j) Pensions and annuities *\*except\** to the extent [that the  
112 proceeds exceed the contributions made by the taxpayer *\*[as*  
113 *provided]\** *\*of exclusions\** in *\*\*[sections]\*\** *\*\*section\*\** 54A:6-10  
114 and *\*\*[54A:6-12]\*\** *\*hereunder, notwithstanding the provisions of*  
115 *N. J. S. 18A:66-51, P. L. 1973, c. 304, s. 41 (C. 43:6A-41), P. L.*  
116 *1954, c. 84, s. 53 (C. 43:15A-53), P. L. 1944, c. 255, s. 17*  
117 *(C. 43:16A-17), and P. L. 1965, c. 89, s. 45 (C. 53:5A-45).\**

118 Distributive share of partnership income.

119 (l) Amounts received as prizes and awards, except as provided  
120 in sections 54A:6-8 and 54A:6-11 hereunder.

121 (m) Rental value of a residence furnished by an employer or a  
122 rental allowance paid by an employer to provide a home.

123 (n) Alimony and separate maintenance payments to the extent  
124 that such payments are required to be made under a decree of  
125 divorce or separate maintenance but not including payments for  
126 support of minor children.

1 2. N. J. S. 54A:6-10 is amended to read as follows:

2 54A:6-10. Pensions and annuities. Gross income shall not in-  
3 clude [that part of any amount] *\*[amounts]\** *\*that part of any*  
4 *amount\** received as an annuity under an annuity, endowment, or  
5 life insurance contract [which bears the same ratio to such amount  
6 as the investment in the contract (as of the annuity starting date)  
7 bears to the expected return under the contract (as of such date).  
8 Where (1) part of the consideration for an annuity, endowment, or  
9 life insurance contract is contributed by the employer, and (2) dur-  
10 ing the 3-year period beginning on the date on which an  
11 amount is first received under the contract as an annuity, the  
12 aggregate amount receivable by the employee under the terms of  
13 the contract is equal to or greater than the consideration for the  
14 contract contributed by the employee, then all amounts received  
15 as an annuity under the contract shall be excluded from gross  
16 income until there has been so excluded an amount equal to the  
17 consideration for the contract contributed by the employee] *\*[or*  
18 *amounts received as pension, disability or retirement benefits,*  
19 *under any public or private plan, whether the consideration therefor*  
20 *is contributed by the employee or employer or both, to the extent*  
21 *of \$10,000.00 in any one year]\** *\*which bears the same ratio to*  
22 *such amount as the investment in the contract as of the annuity*  
23 *starting date bears to the expected return under the contract as of*  
24 *such date. Where (1) part of the consideration for an annuity,*

25 endowment, or life insurance contract is contributed by the em-  
 26 ployer, and (2) during the 3-year period beginning on the date on  
 27 which an amount is first received under the contract as an annuity,  
 28 the aggregate amount receivable by the employee under the terms  
 29 of the contract is equal to or greater than the consideration for the  
 30 contract contributed by the employee, then all amounts received  
 31 as an annuity under the contract shall be excluded from gross  
 32 income until there has been so excluded an amount equal to the  
 33 consideration for the contract contributed by the employee.

34 *\*\*In addition to that part of any amount received as an annuity*  
 35 *which is excludable from gross income as herein provided, gross in-*  
 36 *come shall not include payments of \$7,500.00 for a married couple*  
 37 *filing jointly, \$3,750.00 for a married person filing separately, or*  
 38 *\$5,000.00 for a single taxpayer, received as an annuity, endowment*  
 39 *or life insurance contract, or payments of such amounts or less for*  
 40 *each class of taxpayer as heretofore designated, which are received*  
 41 *as pension, disability or retirement benefits under any public or*  
 42 *private plan, whether the consideration therefor is contributed by*  
 43 *the employee or employer or both, provided that the taxpayer either*  
 44 *by virtue of age or disability is or would be eligible to receive pay-*  
 45 *ments under the Federal Social Security Act.\*\**

46 *Gross income shall not include any amount received under any*  
 47 *public or private plan by reason of a permanent and total*  
 48 *disability\*.*

1 3. N. J. S. 54A:6-12 is **\*\*[amended to read as follows:]\*\***  
 1A **\*\*hereby repealed.\*\***

2 **\*\*[54A:6-12. Pensions of persons not covered under Social**  
 3 **Security. [Gross] In addition to the exclusion provided under**  
 4 **N. J. S. 54A:6-10\*[, gross income shall not include pension, dis-**  
 5 **ability or retirement programs of the Federal Government or of any**  
 6 **State or its political subdivisions, or agencies thereof, for persons**  
 7 **not covered under 54A:6-2 or 54A:6-3 hereof; provided, however,**  
 8 **that the total amount of benefits to be allowed exclusion herein shall**  
 9 **not be in excess of the maximum amount of benefits payable to and**  
 10 **allowable for exclusion in 54A:6-2 and 54A:6-3]\* \*any taxpayer**  
 11 **not covered under 54A:6-2 or 54A:6-3, but who would be eligible**  
 12 **in any year to receive payments under such act if he or she were**  
 13 **covered thereby, shall be allowed an exclusion from his or her gross**  
 14 **income in such year the amount of \$3,000.00 for a single taxpayer**  
 15 **or a married taxpayer filing separately and the amount of \$6,000.00**  
 16 **for a married taxpayer filing a joint return\*.]\*\***

1 4. This act shall take effect immediately and shall be retroactive  
 2 to **\*\*[July 1, 1976]\* \* \*\* [\*\*January 1, 1977\* ]\*\* \* \*\* July 1,**  
 3 **1976\*\*\*.**



ASSEMBLY AMENDMENTS TO

**SENATE, No. 1709**

[THIRD OFFICIAL COPY REPRINT]

**STATE OF NEW JERSEY**

ADOPTED FEBRUARY 17, 1977

Amend page 1, section 1, after line 19, add new paragraph as follows:

“For the tax year 1976, any taxpayer with a tax liability under this subsection, or under the ‘Tax on Capital Gains and Other Unearned Income Act’ (P. L. 1975, c. 172), shall not be subject to payment of an amount greater than the amount he would have paid if either return had covered all capital transactions during the full tax year 1976; provided, however, that the rate which shall apply to any capital gain shall be that in effect on the date of the transaction. To the extent that any loss is used to offset any gain under (P. L. 1975, c. 172) it shall not be used to offset any gain under the ‘New Jersey Gross Income Tax Act’ P. L. 1976, c. 47).”

Amend page 4, section 1, line 115, omit “c. 304”, insert “c. 140”.

Amend page 5, section 2, lines 34-45, omit entire paragraph.

Amend page 5, section 2, after line 45, insert new paragraph as follows:

“In addition to that part of any amount received as an annuity which is excludable from gross income as herein provided, gross income shall not include payments of up to \$10,000.00 for a married couple filing jointly, \$5,000.00 for a married person filing separately or \$7,500.00 for a single taxpayer, which are received as an annuity, endowment or life insurance contract, or payments of any such amounts which are received as pension, disability, or retirement benefits, under any public or private plan, whether the consideration therefor is contributed by the employee or employer or both, by any person who, either by virtue of age or disability, is or would be eligible to receive payments under the Federal Social Security Act.”

Amend page 5, section 4, line 3, after 1976, add as follows: “except that with respect to payments heretofore declared exempt from the act, to which this act is amendatory by virtue of the provisions of N. J. S. 18A:66-51, P. L. 1973, c. 140, section 41 (C. 43:6A-41), P. L. 1954, c. 84, section 53 (C. 43:15A-53), P. L. 1944, c. 255, section 17 (C. 43:16A-17) and P. L. 1965, c. 89, section 45 (C. 53:5A-45), this act shall be effective retroactive to January 1, 1977.”

FROM THE OFFICE OF THE GOVERNOR

MARCH 16, 1977

FOR FURTHER INFORMATION

FOR IMMEDIATE RELEASE

ANNE BURNS 8956

Governor Brendan Byrne Wednesday signed a bill which amends the New Jersey Gross Income Tax with regard to pensions, annuities and capital gains income.

The bill, S-1709, sponsored by Senator Joseph P. Merlino, (D-Mercer) allows a married couple filing jointly to exclude pension, or retirement income of up to \$10,000 from their gross income for tax purposes. A single person will be allowed to exclude pension or retirement income of up to \$7,500 from his or her gross income. A married person filing separately will be permitted to exclude \$5,000.

The bill also states the gross income will not include any money received under a private or public plan for permanent and total disability.

Since income tax was collected for only 6 months of 1976, taxpayers eligible for these exclusions will be permitted to take only one half of the amounts allowed.

In addition to the pension exclusion, the bill will allow taxpayers to exclude certain amounts of annuity income from their gross income.

For example, a retired taxpayer has contributed \$10,000 into a pension fund. This money is now being returned to him in a monthly annuity payment of \$300.\* This bill will allow him to exclude the \$300 annuity payment from his gross income until the amount he receives from the fund exceeds the amount he contributed.

This bill also allows taxpayers to use the full 1976 tax year for the purpose of computing capital gains.

\*NOTE: the figures used in the example are hypothetical.

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State of New Jersey

DEPARTMENT OF LAW AND PUBLIC SAFETY

DIVISION OF LAW  
FINANCIAL SECTION  
36 WEST STATE STREET  
TRENTON 08625

WILLIAM F. HYLAND  
ATTORNEY GENERAL

STEPHEN SKILLMAN  
ASSISTANT ATTORNEY GENERAL  
DIRECTOR

ROBERT J. DEL TUFO  
FIRST ASSISTANT ATTORNEY GENERAL

October 1, 1976

HERBERT GLICKMAN  
DEPUTY ATTORNEY GENERAL  
CHIEF

Sidney Glaser, Director  
Division of Taxation  
Taxation Building  
Trenton, N. J.

PROPERTY OF  
NEW JERSEY STATE LIBRARY  
OCT 6 1976  
185 W. State Street  
Trenton, N. J.

FORMAL OPINION NO. 26 - 1976

Dear Director Glaser:

You have asked whether a general exemption of public pensions from any State tax set forth in various pension laws is applicable to the tax imposed under the New Jersey Gross Income Tax Act. For the following reasons, you are advised that a general exemption of public pensions, paid by this State, from any State tax is applicable to the New Jersey gross income tax.

All of the State administered retirement systems contain a specific statutory exemption from State or municipal taxation of the pensions and other benefits or rights accruing to pensioners in those systems.\* In its enactment of the Income

---

\* See for example the Public Employee Retirement System at N.J.S.A. 43:15A-53 which provides in pertinent part:

"The right of a person to a pension, an annuity, or a retirement allowance, to the return of contributions, any benefit or right accrued or accruing to a person under the provisions of this act and the moneys in the various funds created under this act,

Tax Act the Legislature generally included "[P]ensions and annuities to the extent that the proceeds exceed the contributions made by the taxpayer" within the category of taxable gross income, N.J.S.A. 54A:5-1(j). Accordingly, the question arises whether the Legislature intended in any way to alter or eliminate the preexisting exemptions enjoyed by public pensioners for purposes of the application of the Income Tax Act.

The Act does not contain an express repeal of the exemption from any state tax set forth in the retirement system statutes. Moreover, there is no indication of an implicit legislative purpose to eliminate these exemptions for purposes of the income tax. It is important to note that as an aid in discerning the legislative intention, a repeal by implication is not favored. N.J. State P.B.A. v. Morristown, 65 N.J. 160, 164 (1976). A legislative intent to repeal the existing exemption of these pensions from all state taxation should appear in unequivocal terms. Cf. N. J. State P.B.A. v. Morristown, supra, at 164. Accordingly, in this case it was the clear legislative purpose to allow the general exemption of these public pensions from all state taxation to apply as well to the New Jersey gross income tax.

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Fn. cont'd.

shall be exempt from any State or municipal tax and from levy and sale, garnishment, attachment or any other process arising out of any State or Federal court and, except as in this section and in this act otherwise provided, shall be unassignable." (Emphasis added)

Similar provisions are set forth in the Teachers' Pension and Annuity Fund, N.J.S.A. 18A:66-51; State Police Retirement System, N.J.S.A. 53:5A-45; Police and Firemen's Retirement System, N.J.S.A. 43:16A-17; Judicial Retirement System, N.J.S.A. 43:6A-41.

This legislative design is reinforced by the enactment of specific exemptions for certain additional similar public pensions paid by the federal or state governments and their political subdivisions. For instance, all payments received under the federal Social Security Act or Railroad Retirement Act are excludable income. N.J.S.A. 54A:6-2, 3. Similarly, income received from federal or any state pension, disability or retirement program for persons not covered by Social Security or the Railroad Retirement Act is excludable to a specified maximum. N.J.S.A. 54A:6-12. The Legislature therefore provided for the exemption of certain additional public pensions from the purview of the Act and did not inferentially repeal the absolute exemption already set forth in the various state retirement system laws.

Moreover, the Legislature on its enactment of the Income Tax Law was familiar and conversant with its prior enactments, and in particular the well-known exemption of State public pensions from taxation. Cf. New Ark Coop. Inc. v. Stalks, 141 N.J. Super. 37 (Law Div. 1976). Its failure to include an express exclusion for State public pensions in the Income Tax Act was a result of its recognition of the already exempt status of these pension payments. You are therefore advised that the general exemption from all State taxes set forth in the various State pension laws is applicable to the New Jersey Gross Income Tax Act, and pension payments received from these sources are excludable from taxable gross income under the Act.

Very truly yours,

WILLIAM F. HYLAND  
Attorney General of New Jersey

By *Barry D. Szaferman*  
Barry D. Szaferman  
Deputy Attorney General

BDS:pcd