

54:8B-1 to 22

LEGISLATIVE HISTORY CHECKLIST

NJSA 54:8B-1 to 54:8B-22

Laws of 1975 Chapter 172

Bill No. A3556

Sponsor(s) Hamilton, Barbour, Woodson

Date Introduced July 16, 1975

Committee: Assembly -

Senate -

Amended during passage  Yes  Amendments during passage denoted by asterisks.

Date of passage: Assembly July 18, 1975

Senate July 21, 1975

Date of approval August 4, 1975

Following statements are attached if available:

Sponsor statement  Yes

Committee Statement: Assembly Yes

Senate Yes

Fiscal Note Yes

Veto message Yes

Message on signing  Yes

Following were printed:

Reports Yes

Hearings Yes

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10/4/76  
JUN 1977

[OFFICIAL COPY REPRINT]  
ASSEMBLY, No. 3556

STATE OF NEW JERSEY

INTRODUCED JULY 16, 1975

By Assemblymen HAMILTON, BARBOUR and WOODSON  
(Without Reference)

AN ACT imposing a tax on capital gains and other unearned income  
and supplementing Title 54 of the Revised Statutes.

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

1 1. This act shall be known and may be cited as the "Tax on  
2 Capital Gains and Other Unearned Income Act."

1 2. Definitions: When used in this act unless the context other-  
2 wise requires:

3 "Taxpayer" means each and every individual resident in this  
4 State and every individual nonresident who has earnings received,  
5 credited or accrued in any taxable year from unearned income  
6 subject to tax pursuant to this act, except that in the case of  
7 a nonresident the unearned income shall **\*[be]\*** *\*consist only of*  
8 *capital gains\** derived from *\*sales and exchanges of real or tangible*  
8A *personal\* property* **\*[or sources with]\*** *\*located in\** this State;

9 "Taxable year" means the same accounting period as the tax-  
10 payer's taxable year for Federal income tax purposes or that  
11 portion of such year as commences after December 31, 1974;

12 "Dividends" means those dividends taxable for Federal income  
13 tax purposes without regard to the dividend exclusion;

14 "Director" means the Director of the Division of Taxation in  
15 the Department of the Treasury;

16 **\*[**"Federal Income Tax Law," "Federal Internal Revenue Code,"  
17 or "Federal income tax purposes" means the provisions and  
18 purposes set forth in P. L. 1975, c. . . . (now pending before the  
19 Legislature as Assembly Bill No. 1895) and Federal and State  
20 regulations issued pursuant thereto;**]\***

20A *\*"Capital asset" means property held by the taxpayer (whether*  
20B *or not connected with his trade or business), but does not include—*

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

20C (1) *Stock in trade of the taxpayer or other property of a kind*  
 20D *which would properly be included in the inventory of the taxpayer*  
 20E *if on hand at the close of the taxable year, or property held by the*  
 20F *taxpayer primarily for sale to customers in the ordinary course*  
 20G *of his trade or business;*

20H (2) *Property, used in his trade or business, of a character which*  
 20I *is subject to the allowance for depreciation provided in regulations*  
 20J *promulgated by the director;*

20K (3) *A copyright, a literary, musical, artistic composition, a letter*  
 20L *or memorandum, or similar property, held by—*

20M (A) *A taxpayer whose personal efforts created such*  
 20N *property;*

20O (B) *In the case of a letter, memorandum, or similar prop-*  
 20P *erty, a taxpayer for whom such property was prepared or*  
 20Q *produced; or*

20R (C) *A taxpayer in whose hands the basis of such property is*  
 20S *determined, for purposes of determining gain from a sale or*  
 20T *exchange, in whole or part by reference to the basis of such*  
 20U *property in the hands of a taxpayer described in subparagraph*

20V (A) *or (B);*

20W (4) *Accounts or notes receivable acquired in the ordinary course*  
 20X *of trade or business for services rendered or from the sale of prop-*  
 20Y *erty described in paragraph (1); or*

20Z (5) *An obligation of the United States or any of its possessions,*  
 20AA *or of a State or territory, or any political subdivision thereof, or of*  
 20BB *the District of Columbia, issued on or after March 1, 1941, on a*  
 20CC *discount basis and payable without interest at a fixed maturity*  
 20DD *date not exceeding 1 year from the date of issue.\**

21 “Gains from the sale or exchange of capital assets” means net  
 22 gains as defined *\*by regulation of the director which shall be*  
 23 *consistent with definitions prescribed\** for Federal income tax  
 24 purposes, after due allowance for losses and holding periods, except  
 25 that in such computation, all gains shall be considered to be short-  
 26 term gains, but not nonrecognition of gains, all as provided under  
 27 Federal Income Tax Law, except that no deduction shall be allowed  
 28 for losses carried over from years prior to 1975 provided a tax-  
 29 payer reporting capital gains on the installment basis for Federal  
 30 income tax purposes need not include in his investment income  
 31 installments, except for interest, derived from transactions com-  
 31A pleted before January 1, 1975;

32 “Resident” means an individual: (1) who is domiciled in this  
 33 State; provided, if an individual maintains no permanent place of  
 34 abode in this State, and maintains a permanent place of abode else-  
 35 where, and spends in the aggregate not more than 30 days of the  
 36 taxable year in this State, he shall be deemed not a resident; or  
 37 (2) who is not domiciled in this State but maintains a permanent  
 38 place of abode in this State and is in this State for an aggregate  
 39 of more than 183 days of the taxable year, unless he, not being  
 40 domiciled in this State, is in the Armed Forces of the United States;

41 “Interest” means that interest taxable for Federal income tax  
 42 purposes, except that it shall not include interest which the State  
 43 is prohibited from taxing under the Constitution or the Statutes  
 44 of the United States on obligations of the State of New Jersey or  
 45 its political subdivisions but which shall include interest on obliga-  
 46 tions of other governments or political subdivisions thereof;

47 “Person” means the taxpayer or any pledgee, assignee, receiver,  
 48 referee, trustee, conservator, guardian or other fiduciary of the  
 49 taxpayer acting for the taxpayer.

50 “Royalties” means gross royalties as defined *\*by regulations*  
 50A *of the director consistent with those prescribed\** for Federal income  
 51 tax purposes, less deductions allowed *\*[by N. J. S. 54A:8-161 to*  
 52 *168 and by N. J. S. 54A:8-212 of Assembly Bill No. 1895 (pending*  
 53 *in the Legislature)]\** which are attributable to property held for the  
 54 production of the royalties.

55 “Unearned income” means dividends, gains from the sale or  
 56 exchange of capital assets, interest, royalties, income from an  
 57 interest in an estate or trust pursuant to *\*[N. J. S. 54:8-671 et seq.*  
 58 *of Assembly Bill No. 1895 (pending in the Legislature)]\** *\*regula-*  
 59 *tions of the director\** and compensation derived from a partnership  
 60 or corporation which represents a distribution of earnings or  
 61 profits rather than a reasonable allowance as compensation for  
 62 personal services actually rendered.

### 1 3. Imposition of tax.

2 a. A tax is hereby imposed upon unearned income *\*[.]\** earned\*,  
 3 *received or\** constructively *\*[.]\** accrued or credited to the taxpayer  
 4 during his taxable year, subject to the exemptions allowed under  
 4A this act. *\*The exemptions allowed under this act shall first be*  
 4B *deducted from the total unearned income subject to tax and the*  
 4C *remainder shall be subject to the rate schedule set forth in this*  
 4D *section. There shall then be deducted from the amount of tax so*  
 4E *determined the tax on interest and dividends at one-half the rates*  
 4F *set forth in this section.\**

5 If unearned income is:	The tax is:
6 Not over \$1,000 .....	1.5% of the taxable income
7 Over \$ 1,000 but not over \$ 3,000 .....	\$ 15 plus 2.0% of excess over \$ 1,000
8 Over 3,000 but not over 5,000 .....	55 plus 2.5% of excess over 3,000
9 Over 5,000 but not over 7,000 .....	105 plus 3.0% of excess over 5,000
10 Over 7,000 but not over 9,000 .....	165 plus 3.5% of excess over 7,000
11 Over 9,000 but not over 11,000 .....	235 plus 4.0% of excess over 9,000
12 Over 11,000 but not over 13,000 .....	315 plus 4.5% of excess over 11,000
13 Over 13,000 but not over 15,000 .....	405 plus 5.0% of excess over 13,000
14 Over 15,000 but not over 17,000 .....	505 plus 5.5% of excess over 15,000
15 Over 17,000 but not over 19,000 .....	615 plus 6.0% of excess over 17,000
16 Over 19,000 but not over 21,000 .....	735 plus 6.5% of excess over 19,000
17 Over 21,000 but not over 23,000 .....	865 plus 7.0% of excess over 21,000
18 Over 23,000 but not over 25,000 .....	1,005 plus 7.5% of excess over 23,000
19 Over 25,000 .....	1,155 plus 8.0% of excess over 25,000

20 b. Any taxpayer and spouse whose adjusted gross income as  
21 defined by \***[section 54A:8-62 of Assembly No. 1895 (pending in**  
22 **the Legislature)]**\* *the director consistent with section 62 of the*  
23 *Internal Revenue Code*\* plus interest on governmental obligations  
24 as defined in section 2 of this act and long-term capital gains  
25 otherwise excluded \***[in 54A:8-62 (3) of Assembly No. 1895 (pend-**  
26 **ing in the Legislature)]**\*, is less than \$15,000.00\*, *or in case of an*  
27 *individual taxpayer is less than \$7,500.00*\*, shall not be required to  
28 file any return, *and is exempt from tax under this act*\* provided,  
29 however, that the director may require any person to file an  
30 information return.

1 4. Exemption for senior citizens. For each individual taxpayer  
2 required to pay the tax imposed under this act, there shall be  
3 allowed an exemption of \$1,000.00 provided, if such individual has  
4 attained the age of 65 years on or before the last day of the tax-  
5 able year there shall be allowed an additional exemption of  
6 \$1,000.00 and, provided further, if \***[such]**\* *any*\* individual is  
7 blind, there shall be allowed an additional exemption of \$1,000.00.  
8 On a single return filed for husband and wife jointly, the amount  
9 of the exemption taken on such return shall be the sum of the  
10 exemptions.

1 5. Exemption allowed senior citizens for gain from sale of home.  
2 Every husband and wife, and each other person, described as a  
3 taxpayer in this act shall, in addition to the exemptions allowed  
4 under the provisions of this act, be allowed an exemption and  
5 deduction from the amount of gains from the sale or exchange of  
6 capital assets for any taxable year which are subject to the tax  
7 imposed hereunder in the amount of any gain for such taxable  
8 year included in net gains from the sale or exchange of capital

9 assets for Federal income tax purposes, arising from the sale of  
 10 a residence in such taxable year, but only if (A) either of such  
 11 spouses or both, or said other person, had attained the age of 65  
 12 years on the date of such sale and had owned and used such resi-  
 13 dence as principal residence for at least 5 years of the 8 years  
 14 immediately preceding the date of such sale and (B) said gain is  
 15 the first such gain for such taxpayer with respect to the sale of  
 16 such a residence on or after January 1, 1975. If the exemption  
 17 provided for in this section is availed of by a taxpayer in or for  
 18 any taxable year, no such exemption shall be allowed with respect  
 19 to such taxpayer or a spouse thereof in any subsequent taxable  
 20 year. For the purposes of this section, the word "sale" means  
 21 a "sale," "exchange," "transaction" or "event" through which  
 22 the taxpayer is divested of all interest in his residence.

1 6. **[Exchange]**\* *Sales and exchanges*\* of property.

2 a. No gain or loss shall be recognized in regard to any *sale or*\*  
 3 exchange made in accordance with **[Title 26,]**\* *rules and regula-*  
 4 *tions of the director which shall be consistent with the provisions*  
 5 *of*\* sections 121, 1031, 1033, 1034, 1035 and 1036 of the United States  
 5A Internal Revenue Code of 1954, as amended.

6 b. A partnership as such shall not be subject to the tax imposed  
 7 by this act. Persons who are partners shall be liable for said tax  
 8 only in their individual capacities in the same manner that in-  
 9 dividuals are liable for partnership income under the Federal  
 10 Internal Revenue Code as of January 1, 1976.

11 c. Any pledgee, assignee, receiver, referee, trustee, conservator,  
 12 guardian or other fiduciary, whether or not court appointed, shall  
 13 report any funds which are taxable under this act but said funds  
 14 shall be taxed to the beneficiary or equitable owners thereof, when  
 15 received or when the right to receipt accrues.

16 d. The tax imposed by this act shall not be applicable with respect  
 17 to any sale or exchange of agricultural animals.

1 7. Estates of deceased persons. The estate of each deceased  
 2 person who last dwelt in the State shall be subject to the taxes  
 3 imposed by this act, upon all unearned income, actually or con-  
 4 structively received by such person in the year of his death, upon  
 5 which taxes are due and have not already been paid under said act.

1 8. Duties of fiduciary. Any guardian, receiver, referee, trustee,  
 2 assignee or other fiduciary, or any officer or agent appointed by  
 3 any court to conduct the business or conserve the assets of any  
 4 taxpayer, shall be subject to the tax imposed by this act in the  
 5 same manner and to the same extent as a taxpayer hereunder.

1 9. Tax return. On or before April 15 following the close of each  
2 calendar year, in the case of persons reporting on the basis of a  
3 calendar year, and on or before the fifteenth day of the fourth  
4 month following the close of a fiscal year, in the case of persons  
5 reporting on the basis of a fiscal year, each person who earns,  
6 receives, accrues or has credited to his account any unearned  
7 income shall duly execute and file a tax return with the director,  
8 in such form and containing such information as he may prescribe,  
9 which return shall truly and accurately set forth the amounts  
10 received and the taxpayer's liability under this act; and the full  
11 amount of the tax shall be due and payable to the director on or  
12 before the date prescribed herein for the filing of the return.

1 10. Failure to file return or pay tax.

2 a. Any person failing to file his return when due shall be liable  
3 for a penalty of \$25.00 which penalty shall be payable to, and  
4 recoverable by, the director in the same manner as the tax imposed  
5 by this act. If any tax is not paid when the same becomes due, as  
6 provided under this act, there shall be added to the amount of the  
7 tax, a sum equivalent to 10% thereof, as a penalty, and, in addition  
8 thereto, interest at the rate of 1% per month or fraction thereof  
9 from the date the tax became due until the same is paid. The  
10 director, if satisfied beyond a reasonable doubt that the failure to  
11 comply with any provision of this section was due to reasonable  
12 cause and was not intentional or due to neglect, may abate or remit  
13 the whole or part of any penalty.

14 b. Any taxpayer willfully failing to file a return required by  
15 this act, or filing or causing to be filed or making or causing to be  
16 made, or giving or causing to be given any return, representation,  
17 information, testimony or statement required or authorized by this  
18 act, which is willfully violating any other requirement imposed by  
19 this act or by any rule or regulation of the director adopted here-  
20 under, shall, in addition to any other penalties herein or elsewhere  
21 prescribed, be guilty of a misdemeanor, punishment for which  
22 shall be a fine of not more than \$1,000.00 or imprisonment for not  
23 more than 1 year, or both such fine or imprisonment.

1 11. Powers and duties of director. In addition to the powers  
2 and duties of the director as set forth generally in Title 54 of  
3 the Revised Statutes:

4 a. The director or his authorized representative may require  
5 any taxpayer or other person required to file under this act to  
6 submit copies or pertinent extracts of his Federal income tax  
7 returns, or of any other tax return made to any agency of the

8 Federal Government, or of this or any other state, or of any state-  
9 ment or registration made pursuant to any State or Federal law  
10 pertaining to securities or securities exchange regulations.

11 b. The director may require all taxpayers to keep such records  
12 as he may prescribe, and he may require the production of books,  
13 papers, documents and other data, to provide or secure information  
14 pertinent to the determination of the tax imposed by this act and  
15 the enforcement and collection thereof.

16 c. The director or any person authorized by him may examine  
17 the books, papers, records and equipment of any person liable  
18 under the provisions of this act, and may investigate the activities  
19 of the person in order to verify the accuracy of any return made,  
20 or, if no return is made by the person, to ascertain and determine  
21 the amount required to be paid.

1 12. Deficiency assessments.

2 a. After a final return in due form is filed, the director shall  
3 cause the same to be examined and may make such further audit or  
4 investigation or reaudit as he may deem necessary, and if therefrom  
5 he shall determine that there is a deficiency with respect to the  
6 payment of any tax due under this act, he shall assess or reassess  
7 the additional taxes, penalties and interest due the State, give notice  
8 of such assessment or reassessment to the taxpayer, and make  
9 demand upon him for payment. There shall be added to the amount  
10 of any deficiency assessment or reassessment a sum equivalent to  
11 10% of such assessment or reassessment as a penalty, and, in addi-  
12 tion thereto, interest at the rate of 1% for each month or fraction  
13 thereof to be calculated from the date the tax was originally due  
14 and payable until the date of actual payment. If the director is  
15 satisfied that the said deficiency was not deliberate or due to fraud  
16 or evasion, he may remit or waive the payment of the penalty  
17 provided herein.

18 (b) Except in the case of a willfully false or fraudulent return  
19 with intent to evade the tax, no assessment of additional tax shall be  
20 made after the expiration of more than 3 years from the date of the  
21 filing of a return or from the original due date of a return,  
22 whichever is later; provided, where no return has been filed as  
23 provided by law, the tax may be assessed at any time. Where,  
24 before the expiration of the period prescribed herein for the  
25 assessment of an additional tax, a taxpayer has consented in writ-  
26 ing that such period may be extended, the amount of such additional  
27 tax due may be determined at any time within such extended period.  
28 The period so extended may be further extended by subsequent  
29 consents in writing before the expiration of the extended period.

1 13. Collection of tax, penalties and interest. The amount of any  
2 tax, penalty or interest due and unpaid under the provisions of this  
3 act shall be subject to and may be collected under the provisions of  
4 the State Tax Uniform Procedure Law (subtitle 9 of Title 54 of  
5 the Revised Statutes).

1 14. Abatement of tax. When any tax assessed under the provi-  
2 sions of this act has been found to be uncollectible, such tax and  
3 penalty or interest assessed in connection therewith may be abated  
4 upon the advice and approval of the Attorney General.

1 15. Excess payments. If, within 3 years after the due date of  
2 any return, the director, determines that any amount, penalty or  
3 interest has been paid more than once or has been erroneously or  
4 illegally collected or computed, the director shall credit the excess  
5 amount collected or paid against any amounts then due and payable  
6 from the person under this act or any other law administered by  
7 the director and the balance shall be refunded to the person or his  
8 successors, administrators or executors or any other person legally  
9 responsible for the conduct of the affairs of said person.

1 16. Refund claims. Any taxpayer who feels that he has overpaid  
2 any taxes due under this act may file a claim for refund in writing  
3 with the director within 3 years from the due date for which such  
4 overpayment was made stating the specific grounds upon which  
5 the claim is founded. Failure to file a claim within the time pre-  
6 scribed in this section constitutes a waiver of any demand against  
7 the State on account of overpayment. Within 30 days after dis-  
8 allowing any claim in whole or in part the director shall serve  
9 notice of his action on the claimant.

1 17. Forms. The director shall design a form of return and forms  
2 for such additional statements or schedules as he may require to  
3-4 be filed therewith. Such forms shall provide for the setting forth of  
5 such facts as the director may deem necessary for the proper  
6 enforcement of this act. He shall cause a supply thereof to be  
7 printed and shall furnish appropriate blank forms to each taxpayer  
8 upon application or otherwise as he may deem necessary. Failure  
9 to receive a form shall not relieve any taxpayer from the obligation  
10 to file a return under the provisions of this act. Each such return  
11 shall be made upon the oath or affirmation of the taxpayer.

1 18. Extension of time for filing return and paying tax. The  
2 director may for reasonable cause extend the time for the filing of  
3 any return due under this act and the payment of tax due thereon  
4 under such rules and regulations as he shall prescribe. The director  
5 may require the filing of a tentative return and the payment of an

6 estimated tax. Any additional tax which may be found to be due  
7 on the filing of a final return as allowed by such extension shall bear  
8 interest at the rate of 1% per month or fraction thereof from the  
9 original due date of such tax to the date of actual payment.

1 19. Enforcement. Regulations. The director shall enforce the  
2 provisions of this act and may adopt and enforce rules and regula-  
3 tions relating to the administration and enforcement of this  
4 *\*[chapter.]\* act, which except as otherwise specifically provided*  
5 *in this act, shall be consistent with comparable provisions of the*  
6 *Internal Revenue Code and regulations issued thereunder.\** The  
7 director may prescribe the extent to which any ruling or regulation  
8 shall be applied with retroactive effect.

1 20. Report by director. Confidential information. The director  
2 shall publish in his annual report data showing the amount of taxes  
3 collected under this act, the amount of penalties assessed under  
4 the provisions of this act, and such classifications of taxpayers  
5 with such other facts as he deems pertinent and valuable. Such  
6 published figures shall not disclose the operations of any taxpayer  
7 in such manner as to permit the identification of such taxpayer by  
8 those unassociated with his business. The director, his attorney or  
9 agent, or any other officer or employee of the State involved in the  
10 administration of this act, shall not make known in any manner  
11 the amount or source of the taxes collected under this act or any  
12 particular thereof set forth or disclosed in any single return, or  
13 permit any return or copy thereof or any book containing any  
14 abstract or particular thereof to be seen or examined by any  
15 person, except so far as is necessary in carrying out the provisions  
16 of this act; except that the director, his attorney or agent may  
17 disclose such information or any information contained in any  
18 return filed under the provisions of this act, in the County Court  
19 or the Superior Court in any case therein pending in which said  
20 director, or any other department or agency of the State Govern-  
21 ment, is a party, or to any officer or department of the State  
22 Government when required in the course of duty or when there is  
23 reasonable cause to believe that there is infraction of any State  
24 law and to any proper officer of the United States Treasury Depart-  
25 ment or of any other state imposing a gross receipt, income or  
26 franchise tax reciprocating in this privilege. Any person who  
27 violates any provision of this section shall be fined not more than  
28 \$1,000.00 or imprisoned not more than 1 year or both such fine and  
29 imprisonment.

1 21. Appeal to director. Any person, aggrieved by the action of  
2 the director or his authorized agent in fixing the amount of any  
3 tax, penalty or interest provided for by this act may apply to the  
4 director, in writing, within 30 days after notice of such action is  
5 delivered or mailed to him, for a hearing and a correction of the  
6 amount of the tax, penalty or interest so fixed, setting forth the  
7 reasons why such hearing should be granted and the amount in  
8 which such tax, penalty or interest should be reduced. The director  
9 shall promptly consider each such application and may grant or  
10 deny the hearing requested. If the hearing is denied, the applicant  
11 shall be notified thereof forthwith. If it is granted, the director  
12 shall notify the applicant of the time and place fixed for such  
13 hearing. After such hearing the director may make such order in  
14 the premises as appears to him just and lawful and shall furnish a  
15 copy of such order to the applicant. The director may, by notice  
16 in writing, at any time within 3 years after the date when any  
17 return of any person has been due, order a hearing on his own  
18 initiative and require the person filing such return or any other  
19 individual whom he believes to be in possession of relevant  
20 information concerning the taxpayer or the person filing such  
21 return to appear before him or his authorized agent with any  
22 specified books of account, papers or other documents, for examina-  
23 tion under oath.

1 22. Severability clause. If any provision of this act, or any  
2 application of any provision, is held invalid, the invalidity shall  
3 not affect other applications of the provision, or other provisions  
4 of the act, which reasonably can be given effect despite the  
5 invalidity.

1 23. Where any tax payment pertains to a fiscal accounting period  
2 ending after December 31, 1974 and prior to October 1, 1975, the  
3 time for such payment is hereby extended to January 15, 1976 and  
4 such payment may be made on or before said date without incurring  
5 penalty or interest charges. In the event any such payment is not  
6 made on or before January 15, 1976, interest and penalties thereon  
7 shall be computed without regard to this extension.

1 24. Appropriations. It is hereby appropriated to the Division  
2 of Taxation in the Department of the Treasury the sum of  
3 \$250,000.00 or so much thereof as shall be required to carry out  
4 the provisions of this act from the effective date hereof through  
5 the period ending June 30, 1976.

1 25. This act shall take effect immediately and shall be applicable  
2 with respect to unearned income earned, received or constructively  
3 accrued or credited to the taxpayer on or after January 1, 1975.

ASSEMBLY, No. 3556

STATE OF NEW JERSEY

INTRODUCED JULY 16, 1975

By Assemblymen HAMILTON, BARBOUR and WOODSON

(Without Reference)

AN ACT imposing a tax on capital gains and other unearned income  
and supplementing Title 54 of the Revised Statutes.

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7 a nonresident the unearned income shall be derived from property  
8 or sources within this State;

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25 nonrecognition of gains, all as provided under Federal Income  
26 Tax Law, except that no deduction shall be allowed for losses  
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29 purposes need not include in his investment income installments,  
30 except for interest, derived from transactions completed before  
31 January 1, 1975;

32 "Resident" means an individual: (1) who is domiciled in this  
33 State; provided, if an individual maintains no permanent place of  
34 abode in this State, and maintains a permanent place of abode else-  
35 where, and spends in the aggregate not more than 30 days of the  
36 taxable year in this State, he shall be deemed not a resident; or  
37 (2) who is not domiciled in this State but maintains a permanent  
38 place of abode in this State and is in this State for an aggregate  
39 of more than 183 days of the taxable year, unless he, not being  
40 domiciled in this State, is in the Armed Forces of the United States;

41 "Interest" means that interest taxable for Federal income tax  
42 purposes, except that it shall not include interest which the State  
43 is prohibited from taxing under the Constitution or the Statutes  
44 of the United States on obligations of the State of New Jersey or  
45 its political subdivisions but which shall include interest on obliga-  
46 tions of other governments or political subdivisions thereof;

47 "Person" means the taxpayer or any pledgee, assignee, receiver,  
48 referee, trustee, conservator, guardian or other fiduciary of the  
49 taxpayer acting for the taxpayer.

50 "Royalties" means gross royalties as defined for Federal income  
51 tax purposes, less deductions allowed by N. J. S. 54A:8-161 to  
52 168 and by N. J. S. 54A:8-212 of Assembly Bill No. 1895 (pending  
53 in the Legislature) which are attributable to property held for the  
54 production of the royalties.

55 "Unearned income" means dividends, gains from the sale or  
56 exchange of capital assets, interest, royalties, income from an  
57 interest in an estate or trust pursuant to N. J. S. 54:8-671 et seq.  
58 of Assembly Bill No. 1895 (pending in the Legislature) and com-  
59 pensation derived from a partnership or corporation which repre-  
60 sents a distribution of earnings or profits rather than a reasonable  
61 allowance as compensation for personal services actually rendered.

1 3. Imposition of tax.

2 a. A tax is hereby imposed upon unearned income, earned con-  
3 structively, accrued or credited to the taxpayer during his taxable  
4 year, subject to the exemptions allowed under this act.

5	If unearned income is :	The tax is :
6	Not over \$1,000 .....	1.5% of the taxable income
7	Over \$ 1,000 but not over \$ 3,000 .....	\$ 15 plus 2.0% of excess over \$ 1,000
8	Over 3,000 but not over 5,000 .....	55 plus 2.5% of excess over 3,000
9	Over 5,000 but not over 7,000 .....	105 plus 3.0% of excess over 5,000
10	Over 7,000 but not over 9,000 .....	165 plus 3.5% of excess over 7,000
11	Over 9,000 but not over 11,000 .....	235 plus 4.0% of excess over 9,000
12	Over 11,000 but not over 13,000 .....	315 plus 4.5% of excess over 11,000
13	Over 13,000 but not over 15,000 .....	405 plus 5.0% of excess over 13,000
14	Over 15,000 but not over 17,000 .....	505 plus 5.5% of excess over 15,000
15	Over 17,000 but not over 19,000 .....	615 plus 6.0% of excess over 17,000
16	Over 19,000 but not over 21,000 .....	735 plus 6.5% of excess over 19,000
17	Over 21,000 but not over 23,000 .....	865 plus 7.0% of excess over 21,000
18	Over 23,000 but not over 25,000 .....	1,005 plus 7.5% of excess over 23,000
19	Over 25,000 .....	1,155 plus 8.0% of excess over 25,000

20 b. Any taxpayer and spouse whose adjusted gross income as  
21 defined by section 54A:8-62 of Assembly No. 1895 (pending in the  
22 Legislature) plus interest on governmental obligations as defined  
23 in section 2 of this act and long-term capital gains otherwise ex-  
24 cluded in 54A:8-62 (3) of Assembly No. 1895 (pending in the Leg-  
25 islature), is less than \$15,000.00 shall not be required to file any  
26 return, provided, however, that the director may require any per-  
27 son to file an information return.

1 4. Exemption for senior citizens. For each individual taxpayer  
2 required to pay the tax imposed under this act, there shall be  
3 allowed an exemption of \$1,000.00 provided, if such individual has  
4 attained the age of 65 years on or before the last day of the tax-  
5 able year there shall be allowed an additional exemption of  
6 \$1,000.00 and, provided further, if such individual is blind, there  
7 shall be allowed an additional exemption of \$1,000.00. On a single  
8 return filed for husband and wife jointly, the amount of the ex-  
9 emption taken on such return shall be the sum of the exemptions.

1 5. Exemption allowed senior citizens for gain from sale of home.  
2 Every husband and wife, and each other person, described as a  
3 taxpayer in this act shall, in addition to the exemptions allowed  
4 under the provisions of this act, be allowed an exemption and  
5 deduction from the amount of gains from the sale or exchange of  
6 capital assets for any taxable year which are subject to the tax  
7 imposed hereunder in the amount of any gain for such taxable  
8 year included in net gains from the sale or exchange of capital  
9 assets for Federal income tax purposes, arising from the sale of  
10 a residence in such taxable year, but only if (A) either of such  
11 spouses or both, or said other person, had attained the age of 65  
12 years on the date of such sale and had owned and used such resi-  
13 dence as principal residence for at least 5 years of the 8 years  
14 immediately preceding the date of such sale and (B) said gain is

15 the first such gain for such taxpayer with respect to the sale of  
16 such a residence on or after January 1, 1975. If the exemption  
17 provided for in this section is availed of by a taxpayer in or for  
18 any taxable year, no such exemption shall be allowed with respect  
19 to such taxpayer or a spouse thereof in any subsequent taxable  
20 year. For the purposes of this section, the word "sale" means  
21 a "sale," "exchange," "transaction" or "event" through which  
22 the taxpayer is divested of all interest in his residence.

1 6. Exchange of property.

2 a. No gain or loss shall be recognized in regard to any exchange  
3 made in accordance with Title 26, sections 121, 1031, 1033, 1034,  
4 1035 and 1036 of the United States Internal Revenue Code of 1954,  
5 as amended.

6 b. A partnership as such shall not be subject to the tax imposed  
7 by this act. Persons who are partners shall be liable for said tax  
8 only in their individual capacities in the same manner that in-  
9 dividuals are liable for partnership income under the Federal  
10 Internal Revenue Code as of January 1, 1976.

11 c. Any pledgee, assignee, receiver, referee, trustee, conservator,  
12 guardian or other fiduciary, whether or not court appointed, shall  
13 report any funds which are taxable under this act but said funds  
14 shall be taxed to the beneficiary or equitable owners thereof, when  
15 received or when the right to receipt accrues.

16 d. The tax imposed by this act shall not be applicable with respect  
17 to any sale or exchange of agricultural animals.

1 7. Estates of deceased persons. The estate of each deceased  
2 person who last dwelt in the State shall be subject to the taxes  
3 imposed by this act, upon all unearned income, actually or con-  
4 structively received by such person in the year of his death, upon  
5 which taxes are due and have not already been paid under said act.

1 8. Duties of fiduciary. Any guardian, receiver, referee, trustee,  
2 assignee or other fiduciary, or any officer or agent appointed by  
3 any court to conduct the business or conserve the assets of any  
4 taxpayer, shall be subject to the tax imposed by this act in the  
5 same manner and to the same extent as a taxpayer hereunder.

1 9. Tax return. On or before April 15 following the close of each  
2 calendar year, in the case of persons reporting on the basis of a  
3 calendar year, and on or before the fifteenth day of the fourth  
4 month following the close of a fiscal year, in the case of persons  
5 reporting on the basis of a fiscal year, each person who earns,  
6 receives, accrues or has credited to his account any unearned  
7 income shall duly execute and file a tax return with the director,  
8 in such form and containing such information as he may prescribe,

9 which return shall truly and accurately set forth the amounts  
10 received and the taxpayer's liability under this act; and the full  
11 amount of the tax shall be due and payable to the director on or  
12 before the date prescribed herein for the filing of the return.

1 10. Failure to file return or pay tax.

2 a. Any person failing to file his return when due shall be liable  
3 for a penalty of \$25.00 which penalty shall be payable to, and  
4 recoverable by, the director in the same manner as the tax imposed  
5 by this act. If any tax is not paid when the same becomes due, as  
6 provided under this act, there shall be added to the amount of the  
7 tax, a sum equivalent to 10% thereof, as a penalty, and, in addition  
8 thereto, interest at the rate of 1% per month or fraction thereof  
9 from the date the tax became due until the same is paid. The  
10 director, if satisfied beyond a reasonable doubt that the failure to  
11 comply with any provision of this section was due to reasonable  
12 cause and was not intentional or due to neglect, may abate or remit  
13 the whole or part of any penalty.

14 b. Any taxpayer willfully failing to file a return required by  
15 this act, or filing or causing to be filed or making or causing to be  
16 made, or giving or causing to be given any return, representation,  
17 information, testimony or statement required or authorized by this  
18 act, which is willfully violating any other requirement imposed by  
19 this act or by any rule or regulation of the director adopted here-  
20 under, shall, in addition to any other penalties herein or elsewhere  
21 prescribed, be guilty of a misdemeanor, punishment for which  
22 shall be a fine of not more than \$1,000.00 or imprisonment for not  
23 more than 1 year, or both such fine or imprisonment.

1 11. Powers and duties of director. In addition to the powers  
2 and duties of the director as set forth generally in Title 54 of  
3 the Revised Statutes:

4 a. The director or his authorized representative may require  
5 any taxpayer or other person required to file under this act to  
6 submit copies or pertinent extracts of his Federal income tax  
7 returns, or of any other tax return made to any agency of the  
8 Federal Government, or of this or any other state, or of any state-  
9 ment or registration made pursuant to any State or Federal law  
10 pertaining to securities or securities exchange regulations.

11 b. The director may require all taxpayers to keep such records  
12 as he may prescribe, and he may require the production of books,  
13 papers, documents and other data, to provide or secure information  
14 pertinent to the determination of the tax imposed by this act and  
15 the enforcement and collection thereof.

16 c. The director or any person authorized by him may examine  
17 the books, papers, records and equipment of any person liable  
18 under the provisions of this act, and may investigate the activities  
19 of the person in order to verify the accuracy of any return made,  
20 or, if no return is made by the person, to ascertain and determine  
21 the amount required to be paid.

1 12. Deficiency assessments.

2 a. After a final return in due form is filed, the director shall  
3 cause the same to be examined and may make such further audit or  
4 investigation or reaudit as he may deem necessary, and if therefrom  
5 he shall determine that there is a deficiency with respect to the  
6 payment of any tax due under this act, he shall assess or reassess  
7 the additional taxes, penalties and interest due the State, give notice  
8 of such assessment or reassessment to the taxpayer, and make  
9 demand upon him for payment. There shall be added to the amount  
10 of any deficiency assessment or reassessment a sum equivalent to  
11 10% of such assessment or reassessment as a penalty, and, in addi-  
12 tion thereto, interest at the rate of 1% for each month or fraction  
13 thereof to be calculated from the date the tax was originally due  
14 and payable until the date of actual payment. If the director is  
15 satisfied that the said deficiency was not deliberate or due to fraud  
16 or evasion, he may remit or waive the payment of the penalty  
17 provided herein.

18 (b) Except in the case of a willfully false or fraudulent return  
19 with intent to evade the tax, no assessment of additional tax shall be  
20 made after the expiration of more than 3 years from the date of the  
21 filing of a return or from the original due date of a return,  
22 whichever is later; provided, where no return has been filed as  
23 provided by law, the tax may be assessed at any time. Where,  
24 before the expiration of the period prescribed herein for the  
25 assessment of an additional tax, a taxpayer has consented in writ-  
26 ing that such period may be extended, the amount of such additional  
27 tax due may be determined at any time within such extended period.  
28 The period so extended may be further extended by subsequent  
29 consents in writing before the expiration of the extended period.

1 13. Collection of tax, penalties and interest. The amount of any  
2 tax, penalty or interest due and unpaid under the provisions of this  
3 act shall be subject to and may be collected under the provisions of  
4 the State Tax Uniform Procedure Law (subtitle 9 of Title 54 of  
5 the Revised Statutes).

1 14. Abatement of tax. When any tax assessed under the provi-  
2 sions of this act has been found to be uncollectible, such tax and  
3 penalty or interest assessed in connection therewith may be abated  
4 upon the advice and approval of the Attorney General.

1 15. Excess payments. If, within 3 years after the due date of  
2 any return, the director, determines that any amount, penalty or  
3 interest has been paid more than once or has been erroneously or  
4 illegally collected or computed, the director shall credit the excess  
5 amount collected or paid against any amounts then due and payable  
6 from the person under this act or any other law administered by  
7 the director and the balance shall be refunded to the person or his  
8 successors, administrators or executors or any other person legally  
9 responsible for the conduct of the affairs of said person.

1 16. Refund claims. Any taxpayer who feels that he has overpaid  
2 any taxes due under this act may file a claim for refund in writing  
3 with the director within 3 years from the due date for which such  
4 overpayment was made stating the specific grounds upon which  
5 the claim is founded. Failure to file a claim within the time pre-  
6 scribed in this section constitutes a waiver of any demand against  
7 the State on account of overpayment. Within 30 days after dis-  
8 allowing any claim in whole or in part the director shall serve  
9 notice of his action on the claimant.

1 17. Forms. The director shall design a form of return and forms  
2 for such additional statements or schedules as he may require to  
3-4 be filed therewith. Such forms shall provide for the setting forth of  
5 such facts as the director may deem necessary for the proper  
6 enforcement of this act. He shall cause a supply thereof to be  
7 printed and shall furnish appropriate blank forms to each taxpayer  
8 upon application or otherwise as he may deem necessary. Failure  
9 to receive a form shall not relieve any taxpayer from the obligation  
10 to file a return under the provisions of this act. Each such return  
11 shall be made upon the oath or affirmation of the taxpayer.

1 18. Extension of time for filing return and paying tax. The  
2 director may for reasonable cause extend the time for the filing of  
3 any return due under this act and the payment of tax due thereon  
4 under such rules and regulations as he shall prescribe. The director  
5 may require the filing of a tentative return and the payment of an  
6 estimated tax. Any additional tax which may be found to be due  
7 on the filing of a final return as allowed by such extension shall bear  
8 interest at the rate of 1% per month or fraction thereof from the  
9 original due date of such tax to the date of actual payment.

1 19. Enforcement. Regulations. The director shall enforce the  
2 provisions of this act and may adopt and enforce rules and regula-  
3 tions relating to the administration and enforcement of this chapter.  
4 The director may prescribe the extent to which any ruling or  
5 regulation shall be applied with retroactive effect.

1 20. Report by director. Confidential information. The director  
2 shall publish in his annual report data showing the amount of taxes  
3 collected under this act, the amount of penalties assessed under  
4 the provisions of this act, and such classifications of taxpayers  
5 with such other facts as he deems pertinent and valuable. Such  
6 published figures shall not disclose the operations of any taxpayer  
7 in such manner as to permit the identification of such taxpayer by  
8 those unassociated with his business. The director, his attorney or  
9 agent, or any other officer or employee of the State involved in the  
10 administration of this act, shall not make known in any manner  
11 the amount or source of the taxes collected under this act or any  
12 particular thereof set forth or disclosed in any single return, or  
13 permit any return or copy thereof or any book containing any  
14 abstract or particular thereof to be seen or examined by any  
15 person, except so far as is necessary in carrying out the provisions  
16 of this act; except that the director, his attorney or agent may  
17 disclose such information or any information contained in any  
18 return filed under the provisions of this act, in the County Court  
19 or the Superior Court in any case therein pending in which said  
20 director, or any other department or agency of the State Govern-  
21 ment, is a party, or to any officer or department of the State  
22 Government when required in the course of duty or when there is  
23 reasonable cause to believe that there is infraction of any State  
24 law and to any proper officer of the United States Treasury Depart-  
25 ment or of any other state imposing a gross receipt, income or  
26 franchise tax reciprocating in this privilege. Any person who  
27 violates any provision of this section shall be fined not more than  
28 \$1,000.00 or imprisoned not more than 1 year or both such fine and  
29 imprisonment.

1 21. Appeal to director. Any person, aggrieved by the action of  
2 the director or his authorized agent in fixing the amount of any  
3 tax, penalty or interest provided for by this act may apply to the  
4 director, in writing, within 30 days after notice of such action is  
5 delivered or mailed to him, for a hearing and a correction of the  
6 amount of the tax, penalty or interest so fixed, setting forth the  
7 reasons why such hearing should be granted and the amount in  
8 which such tax, penalty or interest should be reduced. The director

9 shall promptly consider each such application and may grant or  
10 deny the hearing requested. If the hearing is denied, the applicant  
11 shall be notified thereof forthwith. If it is granted, the director  
12 shall notify the applicant of the time and place fixed for such  
13 hearing. After such hearing the director may make such order in  
14 the premises as appears to him just and lawful and shall furnish a  
15 copy of such order to the applicant. The director may, by notice  
16 in writing, at any time within 3 years after the date when any  
17 return of any person has been due, order a hearing on his own  
18 initiative and require the person filing such return or any other  
19 individual whom he believes to be in possession of relevant  
20 information concerning the taxpayer or the person filing such  
21 return to appear before him or his authorized agent with any  
22 specified books of account, papers or other documents, for examina-  
23 tion under oath.

1 22. Severability clause. If any provision of this act, or any  
2 application of any provision, is held invalid, the invalidity shall  
3 not affect other applications of the provision, or other provisions  
4 of the act, which reasonably can be given effect despite the  
5 invalidity.

1 23. Where any tax payment pertains to a fiscal accounting period  
2 ending after December 31, 1974 and prior to October 1, 1975, the  
3 time for such payment is hereby extended to January 15, 1976 and  
4 such payment may be made on or before said date without incurring  
5 penalty or interest charges. In the event any such payment is not  
6 made on or before January 15, 1976, interest and penalties thereon  
7 shall be computed without regard to this extension.

1 24. Appropriations. It is hereby appropriated to the Division  
2 of Taxation in the Department of the Treasury the sum of  
3 \$250,000.00 or so much thereof as shall be required to carry out  
4 the provisions of this act from the effective date hereof through  
5 the period ending June 30, 1976.

1 25. This act shall take effect immediately and shall be applicable  
2 with respect to unearned income earned, received or constructively  
3 accrued or credited to the taxpayer on or after January 1, 1975.

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#### STATEMENT

This bill imposes a graduated tax on capital gains and other unearned income. Persons having adjusted gross income less than \$15,000.00 are excused from paying the tax.

SENATE AMENDMENTS TO  
**ASSEMBLY, No. 3556**

**STATE OF NEW JERSEY**

ADOPTED JULY 21, 1975

Amend page 1, section 2, line 7, omit "be", insert "consist only of capital gains"; after "from", insert "sales and exchanges of real or tangible personal".

Amend page 1, section 2, line 8, omit "or sources within", insert "located in".

Amend page 1, section 2, lines 16-20, omit in their entirety and insert:  
"Capital asset" means property held by the taxpayer (whether or not connected with his trade or business), but does not include—

(1) Stock in trade of the taxpayer or other property of a kind which would properly be included in the inventory of the taxpayer if on hand at the close of the taxable year, or property held by the taxpayer primarily for sale to customers in the ordinary course of his trade or business;

(2) Property, used in his trade or business, of a character which is subject to the allowance for depreciation provided in regulations promulgated by the director;

(3) A copyright, a literary, musical, artistic composition, a letter or memorandum, or similar property, held by—

(A) A taxpayer whose personal efforts created such property;

(B) In the case of a letter, memorandum, or similar property, a taxpayer for whom such property was prepared or produced; or

(C) A taxpayer in whose hands the basis of such property is determined, for purposes of determining gain from a sale or exchange, in whole or part by reference to the basis of such property in the hands of a taxpayer described in subparagraph (A) or (B);

(4) Accounts or notes receivable acquired in the ordinary course of trade or business for services rendered or from the sale of property described in paragraph (1); or

(5) An obligation of the United States or any of its possessions, or of a State or territory, or any political subdivision thereof, or of the District of Columbia, issued on or after March 1, 1941, on a discount basis and payable without interest at a fixed maturity date not exceeding 1 year from the date of issue."

Amend page 1, section 2, line 22, after "defined", insert "by regulations of the director which shall be consistent with definitions prescribed".

Amend page 2, section 2, line 50, after "defined", insert "by regulations of the director consistent with those prescribed".

Amend page 2, section 2, line 51, after "allowed", omit remainder of line.

Amend page 2, section 2, line 52, omit in its entirety.

Amend page 2, section 2, line 53, omit "in the Legislature)".

Amend page 2, section 2, line 57, after "to", omit remainder of line.

Amend page 2, section 2, line 58, omit "of Assembly Bill No. 1895 (pending in the Legislature)," insert "regulations of the director".

Amend page 2, section 3, line 2, after "income", omit ","; after "earned", insert ", received or".

Amend page 2, section 3, line 3, after "structively", omit ",".

Amend page 2, section 3, line 4, after "act", insert "The exemptions allowed under this act shall first be deducted from the total unearned income subject to tax and the remainder shall be subject to the rate schedule set forth in this section. There shall then be deducted from the amount of tax so determined the tax on interest and dividends at one-half the rates set forth in this section."

Amend page 3, section 3, line 21, after "by", omit remainder of line.

Amend page 3, section 3, line 22, omit "Legislature)", insert "the director consistent with section 62 of the Internal Revenue Code".

Amend page 3, section 3, line 24, after "cluded", omit remainder of line.

Amend page 3, section 3, line 25, omit "islature)", after "\$15,000.00", insert ", or in the case of an individual taxpayer is less than \$7,500.00,".

Amend page 3, section 3, line 26, after "return", insert "and is exempt from tax under this act".

Amend page 3, section 4, line 6, omit "such", insert "any".

Amend page 4, section 6, line 1, omit "Exchange", insert "Sales and exchanges".

Amend page 4, section 6, line 2, after "any", insert "sale or".

Amend page 4, section 6, line 3, omit "Title 26", insert "rules and regulations of the director which shall be consistent with the provisions of".

Amend page 8, section 19, line 3, omit "chapter", insert "act, which except as otherwise specifically provided in this act, shall be consistent with comparable provisions of the Internal Revenue Code and regulations issued thereunder."

[SENATE REPRINT]

## ASSEMBLY, No. 3556

with Senate amendments adopted July 2, 1975

# STATE OF NEW JERSEY

INTRODUCED JULY 16, 1975

By Assemblymen HAMILTON, BARBOUR and WOODSON

(Without Reference)

AN ACT imposing a tax on capital gains and other unearned income and supplementing Title 54 of the Revised Statutes.

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

1 1. This act shall be known and may be cited as the "Tax on  
2 Capital Gains and Other Unearned Income Act."

1 2. Definitions: When used in this act unless the context other-  
2 wise requires:

3 "Taxpayer" means each and every individual resident in this  
4 State and every individual nonresident who has earnings received,  
5 credited or accrued in any taxable year from unearned income  
6 subject to tax pursuant to this act, except that in the case of  
7 a nonresident the unearned income shall **\*[be]\*** *\*consist only of*  
8 *capital gains\** derived from *\*sales and exchanges of real or tangible*  
8A *personal\* property* **\*[or sources with]\*** *\*located in\** this State;

9 "Taxable year" means the same accounting period as the tax-  
10 payer's taxable year for Federal income tax purposes or that  
11 portion of such year as commences after December 31, 1974;

12 "Dividends" means those dividends taxable for Federal income  
13 tax purposes without regard to the dividend exclusion;

14 "Director" means the Director of the Division of Taxation in  
15 the Department of the Treasury;

16 **\*[**"Federal Income Tax Law," "Federal Internal Revenue Code,"  
17 or "Federal income tax purposes" means the provisions and  
18 purposes set forth in P. L. 1975, c. . . . (now pending before the  
19 Legislature as Assembly Bill No. 1895) and Federal and State  
20 regulations issued pursuant thereto;**]\***

20A *\*"Capital asset" means property held by the taxpayer (whether*  
20B *or not connected with his trade or business), but does not include—*

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

20C (1) *Stock in trade of the taxpayer or other property of a kind*  
 20D *which would properly be included in the inventory of the taxpayer*  
 20E *if on hand at the close of the taxable year, or property held by the*  
 20F *taxpayer primarily for sale to customers in the ordinary course*  
 20G *of his trade or business;*

20H (2) *Property, used in his trade or business, of a character which*  
 20I *is subject to the allowance for depreciation provided in regulations*  
 20J *promulgated by the director;*

20K (3) *A copyright, a literary, musical, artistic composition, a letter*  
 20L *or memorandum, or similar property, held by—*

20M (A) *A taxpayer whose personal efforts created such*  
 20N *property;*

20O (B) *In the case of a letter, memorandum, or similar prop-*  
 20P *erty, a taxpayer for whom such property was prepared or*  
 20Q *produced; or*

20R (C) *A taxpayer in whose hands the basis of such property is*  
 20S *determined, for purposes of determining gain from a sale or*  
 20T *exchange, in whole or part by reference to the basis of such*  
 20U *property in the hands of a taxpayer described in subparagraph*  
 20V *(A) or (B);*

20W (4) *Accounts or notes receivable acquired in the ordinary course*  
 20X *of trade or business for services rendered or from the sale of prop-*  
 20Y *erty described in paragraph (1); or*

20Z (5) *An obligation of the United States or any of its possessions,*  
 20AA *or of a State or territory, or any political subdivision thereof, or of*  
 20BB *the District of Columbia, issued on or after March 1, 1941, on a*  
 20CC *discount basis and payable without interest at a fixed maturity*  
 20DD *date not exceeding 1 year from the date of issue.\**

21 “Gains from the sale or exchange of capital assets” means net  
 22 gains as defined *\*by regulation of the director which shall be*  
 23 *consistent with definitions prescribed\** for Federal income tax  
 24 purposes, after due allowance for losses and holding periods, except  
 25 that in such computation, all gains shall be considered to be short-  
 26 term gains, but not nonrecognition of gains, all as provided under  
 27 Federal Income Tax Law, except that no deduction shall be allowed  
 28 for losses carried over from years prior to 1975 provided a tax-  
 29 payer reporting capital gains on the installment basis for Federal  
 30 income tax purposes need not include in his investment income  
 31 installments, except for interest, derived from transactions com-  
 31A pleted before January 1, 1975;

32 "Resident" means an individual: (1) who is domiciled in this  
 33 State; provided, if an individual maintains no permanent place of  
 34 abode in this State, and maintains a permanent place of abode else-  
 35 where, and spends in the aggregate not more than 30 days of the  
 36 taxable year in this State, he shall be deemed not a resident; or  
 37 (2) who is not domiciled in this State but maintains a permanent  
 38 place of abode in this State and is in this State for an aggregate  
 39 of more than 183 days of the taxable year, unless he, not being  
 40 domiciled in this State, is in the Armed Forces of the United States;

41 "Interest" means that interest taxable for Federal income tax  
 42 purposes, except that it shall not include interest which the State  
 43 is prohibited from taxing under the Constitution or the Statutes  
 44 of the United States on obligations of the State of New Jersey or  
 45 its political subdivisions but which shall include interest on obliga-  
 46 tions of other governments or political subdivisions thereof;

47 "Person" means the taxpayer or any pledgee, assignee, receiver,  
 48 referee, trustee, conservator, guardian or other fiduciary of the  
 49 taxpayer acting for the taxpayer.

50 "Royalties" means gross royalties as defined *\*by regulations*  
 50A *of the director consistent with those prescribed\** for Federal income  
 51 tax purposes, less deductions allowed *\*[by N. J. S. 54A:8-161 to*  
 52 *168 and by N. J. S. 54A:8-212 of Assembly Bill No. 1895 (pending*  
 53 *in the Legislature)]\** which are attributable to property held for the  
 54 production of the royalties.

55 "Unearned income" means dividends, gains from the sale or  
 56 exchange of capital assets, interest, royalties, income from an  
 57 interest in an estate or trust pursuant to *\*[N. J. S. 54:8-671 et seq.*  
 58 *of Assembly Bill No. 1895 (pending in the Legislature)]\** *\*regula-*  
 59 *tions of the director\** and compensation derived from a partnership  
 60 or corporation which represents a distribution of earnings or  
 61 profits rather than a reasonable allowance as compensation for  
 62 personal services actually rendered.

1 3. Imposition of tax.

2 a. A tax is hereby imposed upon unearned income *\*[,]\** earned\*,  
 3 *received or\** constructively *\*[,]\** accrued or credited to the taxpayer  
 4 during his taxable year, subject to the exemptions allowed under  
 4A this act. *\*The exemptions allowed under this act shall first be*  
 4B *deducted from the total unearned income subject to tax and the*  
 4C *remainder shall be subject to the rate schedule set forth in this*  
 4D *section. There shall then be deducted from the amount of tax so*  
 4E *determined the tax on interest and dividends at one-half the rates*  
 4F *set forth in this section.\**

5      If unearned income is:	The tax is:
6 Not over \$1,000 .....	1.5% of the taxable income
7 Over \$ 1,000 but not over \$ 3,000 .....	\$ 15 plus 2.0% of excess over \$ 1,000
8 Over 3,000 but not over 5,000 .....	55 plus 2.5% of excess over 3,000
9 Over 5,000 but not over 7,000 .....	105 plus 3.0% of excess over 5,000
10 Over 7,000 but not over 9,000 .....	165 plus 3.5% of excess over 7,000
11 Over 9,000 but not over 11,000 .....	235 plus 4.0% of excess over 9,000
12 Over 11,000 but not over 13,000 .....	315 plus 4.5% of excess over 11,000
13 Over 13,000 but not over 15,000 .....	405 plus 5.0% of excess over 13,000
14 Over 15,000 but not over 17,000 .....	505 plus 5.5% of excess over 15,000
15 Over 17,000 but not over 19,000 .....	615 plus 6.0% of excess over 17,000
16 Over 19,000 but not over 21,000 .....	735 plus 6.5% of excess over 19,000
17 Over 21,000 but not over 23,000 .....	865 plus 7.0% of excess over 21,000
18 Over 23,000 but not over 25,000 .....	1,005 plus 7.5% of excess over 23,000
19 Over 25,000 .....	1,155 plus 8.0% of excess over 25,000

20    b. Any taxpayer and spouse whose adjusted gross income as  
21 defined by \***[section 54A:8-62 of Assembly No. 1895 (pending in**  
22 **the Legislature)]**\* *the director consistent with section 62 of the*  
23 *Internal Revenue Code*\* plus interest on governmental obligations  
24 as defined in section 2 of this act and long-term capital gains  
25 otherwise excluded \***[in 54A:8-62 (3) of Assembly No. 1895 (pend-**  
26 **ing in the Legislature)]**\*, is less than \$15,000.00\*, *or in case of an*  
27 *individual taxpayer is less than \$7,500.00*\*, shall not be required to  
28 file any return, *and is exempt from tax under this act*\* provided,  
29 however, that the director may require any person to file an  
30 information return.

1    4. Exemption for senior citizens. For each individual taxpayer  
2 required to pay the tax imposed under this act, there shall be  
3 allowed an exemption of \$1,000.00 provided, if such individual has  
4 attained the age of 65 years on or before the last day of the tax-  
5 able year there shall be allowed an additional exemption of  
6 \$1,000.00 and, provided further, if \***[such]**\* *any*\* individual is  
7 blind, there shall be allowed an additional exemption of \$1,000.00.  
8 On a single return filed for husband and wife jointly, the amount  
9 of the exemption taken on such return shall be the sum of the  
10 exemptions.

1    5. Exemption allowed senior citizens for gain from sale of home.  
2 Every husband and wife, and each other person, described as a  
3 taxpayer in this act shall, in addition to the exemptions allowed  
4 under the provisions of this act, be allowed an exemption and  
5 deduction from the amount of gains from the sale or exchange of  
6 capital assets for any taxable year which are subject to the tax  
7 imposed hereunder in the amount of any gain for such taxable  
8 year included in net gains from the sale or exchange of capital

9 assets for Federal income tax purposes, arising from the sale of  
10 a residence in such taxable year, but only if (A) either of such  
11 spouses or both, or said other person, had attained the age of 65  
12 years on the date of such sale and had owned and used such resi-  
13 dence as principal residence for at least 5 years of the 8 years  
14 immediately preceding the date of such sale and (B) said gain is  
15 the first such gain for such taxpayer with respect to the sale of  
16 such a residence on or after January 1, 1975. If the exemption  
17 provided for in this section is availed of by a taxpayer in or for  
18 any taxable year, no such exemption shall be allowed with respect  
19 to such taxpayer or a spouse thereof in any subsequent taxable  
20 year. For the purposes of this section, the word "sale" means  
21 a "sale," "exchange," "transaction" or "event" through which  
22 the taxpayer is divested of all interest in his residence.

1 6. \***[Exchange]**\* *\*Sales and exchanges\** of property.

2 a. No gain or loss shall be recognized in regard to any *\*sale or\**  
3 exchange made in accordance with *\***[Title 26,]**\* *rules and regula-**  
4 *tions of the director which shall be consistent with the provisions*  
5 *of\** sections 121, 1031, 1033, 1034, 1035 and 1036 of the United States  
5A Internal Revenue Code of 1954, as amended.

6 b. A partnership as such shall not be subject to the tax imposed  
7 by this act. Persons who are partners shall be liable for said tax  
8 only in their individual capacities in the same manner that in-  
9 dividuals are liable for partnership income under the Federal  
10 Internal Revenue Code as of January 1, 1976.

11 c. Any pledgee, assignee, receiver, referee, trustee, conservator,  
12 guardian or other fiduciary, whether or not court appointed, shall  
13 report any funds which are taxable under this act but said funds  
14 shall be taxed to the beneficiary or equitable owners thereof, when  
15 received or when the right to receipt accrues.

16 d. The tax imposed by this act shall not be applicable with respect  
17 to any sale or exchange of agricultural animals.

1 7. Estates of deceased persons. The estate of each deceased  
2 person who last dwelt in the State shall be subject to the taxes  
3 imposed by this act, upon all unearned income, actually or con-  
4 structively received by such person in the year of his death, upon  
5 which taxes are due and have not already been paid under said act.

1 8. Duties of fiduciary. Any guardian, receiver, referee, trustee,  
2 assignee or other fiduciary, or any officer or agent appointed by  
3 any court to conduct the business or conserve the assets of any  
4 taxpayer, shall be subject to the tax imposed by this act in the  
5 same manner and to the same extent as a taxpayer hereunder.

1 9. Tax return. On or before April 15 following the close of each  
2 calendar year, in the case of persons reporting on the basis of a  
3 calendar year, and on or before the fifteenth day of the fourth  
4 month following the close of a fiscal year, in the case of persons  
5 reporting on the basis of a fiscal year, each person who earns,  
6 receives, accrues or has credited to his account any unearned  
7 income shall duly execute and file a tax return with the director,  
8 in such form and containing such information as he may prescribe,  
9 which return shall truly and accurately set forth the amounts  
10 received and the taxpayer's liability under this act; and the full  
11 amount of the tax shall be due and payable to the director on or  
12 before the date prescribed herein for the filing of the return.

1 10. Failure to file return or pay tax.

2 a. Any person failing to file his return when due shall be liable  
3 for a penalty of \$25.00 which penalty shall be payable to, and  
4 recoverable by, the director in the same manner as the tax imposed  
5 by this act. If any tax is not paid when the same becomes due, as  
6 provided under this act, there shall be added to the amount of the  
7 tax, a sum equivalent to 10% thereof, as a penalty, and, in addition  
8 thereto, interest at the rate of 1% per month or fraction thereof  
9 from the date the tax became due until the same is paid. The  
10 director, if satisfied beyond a reasonable doubt that the failure to  
11 comply with any provision of this section was due to reasonable  
12 cause and was not intentional or due to neglect, may abate or remit  
13 the whole or part of any penalty.

14 b. Any taxpayer willfully failing to file a return required by  
15 this act, or filing or causing to be filed or making or causing to be  
16 made, or giving or causing to be given any return, representation,  
17 information, testimony or statement required or authorized by this  
18 act, which is willfully violating any other requirement imposed by  
19 this act or by any rule or regulation of the director adopted here-  
20 under, shall, in addition to any other penalties herein or elsewhere  
21 prescribed, be guilty of a misdemeanor, punishment for which  
22 shall be a fine of not more than \$1,000.00 or imprisonment for not  
23 more than 1 year, or both such fine or imprisonment.

1 11. Powers and duties of director. In addition to the powers  
2 and duties of the director as set forth generally in Title 54 of  
3 the Revised Statutes:

4 a. The director or his authorized representative may require  
5 any taxpayer or other person required to file under this act to  
6 submit copies or pertinent extracts of his Federal income tax  
7 returns, or of any other tax return made to any agency of the

8 Federal Government, or of this or any other state, or of any state-  
9 ment or registration made pursuant to any State or Federal law  
10 pertaining to securities or securities exchange regulations.

11 b. The director may require all taxpayers to keep such records  
12 as he may prescribe, and he may require the production of books,  
13 papers, documents and other data, to provide or secure information  
14 pertinent to the determination of the tax imposed by this act and  
15 the enforcement and collection thereof.

16 c. The director or any person authorized by him may examine  
17 the books, papers, records and equipment of any person liable  
18 under the provisions of this act, and may investigate the activities  
19 of the person in order to verify the accuracy of any return made,  
20 or, if no return is made by the person, to ascertain and determine  
21 the amount required to be paid.

1 12. Deficiency assessments.

2 a. After a final return in due form is filed, the director shall  
3 cause the same to be examined and may make such further audit or  
4 investigation or reaudit as he may deem necessary, and if therefrom  
5 he shall determine that there is a deficiency with respect to the  
6 payment of any tax due under this act, he shall assess or reassess  
7 the additional taxes, penalties and interest due the State, give notice  
8 of such assessment or reassessment to the taxpayer, and make  
9 demand upon him for payment. There shall be added to the amount  
10 of any deficiency assessment or reassessment a sum equivalent to  
11 10% of such assessment or reassessment as a penalty, and, in addi-  
12 tion thereto, interest at the rate of 1% for each month or fraction  
13 thereof to be calculated from the date the tax was originally due  
14 and payable until the date of actual payment. If the director is  
15 satisfied that the said deficiency was not deliberate or due to fraud  
16 or evasion, he may remit or waive the payment of the penalty  
17 provided herein.

18 (b) Except in the case of a willfully false or fraudulent return  
19 with intent to evade the tax, no assessment of additional tax shall be  
20 made after the expiration of more than 3 years from the date of the  
21 filing of a return or from the original due date of a return,  
22 whichever is later; provided, where no return has been filed as  
23 provided by law, the tax may be assessed at any time. Where,  
24 before the expiration of the period prescribed herein for the  
25 assessment of an additional tax, a taxpayer has consented in writ-  
26 ing that such period may be extended, the amount of such additional  
27 tax due may be determined at any time within such extended period.  
28 The period so extended may be further extended by subsequent  
29 consents in writing before the expiration of the extended period.

1 13. Collection of tax, penalties and interest. The amount of any  
2 tax, penalty or interest due and unpaid under the provisions of this  
3 act shall be subject to and may be collected under the provisions of  
4 the State Tax Uniform Procedure Law (subtitle 9 of Title 54 of  
5 the Revised Statutes).

1 14. Abatement of tax. When any tax assessed under the provi-  
2 sions of this act has been found to be uncollectible, such tax and  
3 penalty or interest assessed in connection therewith may be abated  
4 upon the advice and approval of the Attorney General.

1 15. Excess payments. If, within 3 years after the due date of  
2 any return, the director, determines that any amount, penalty or  
3 interest has been paid more than once or has been erroneously or  
4 illegally collected or computed, the director shall credit the excess  
5 amount collected or paid against any amounts then due and payable  
6 from the person under this act or any other law administered by  
7 the director and the balance shall be refunded to the person or his  
8 successors, administrators or executors or any other person legally  
9 responsible for the conduct of the affairs of said person.

1 16. Refund claims. Any taxpayer who feels that he has overpaid  
2 any taxes due under this act may file a claim for refund in writing  
3 with the director within 3 years from the due date for which such  
4 overpayment was made stating the specific grounds upon which  
5 the claim is founded. Failure to file a claim within the time pre-  
6 scribed in this section constitutes a waiver of any demand against  
7 the State on account of overpayment. Within 30 days after dis-  
8 allowing any claim in whole or in part the director shall serve  
9 notice of his action on the claimant.

1 17. Forms. The director shall design a form of return and forms  
2 for such additional statements or schedules as he may require to  
3-4 be filed therewith. Such forms shall provide for the setting forth of  
5 such facts as the director may deem necessary for the proper  
6 enforcement of this act. He shall cause a supply thereof to be  
7 printed and shall furnish appropriate blank forms to each taxpayer  
8 upon application or otherwise as he may deem necessary. Failure  
9 to receive a form shall not relieve any taxpayer from the obligation  
10 to file a return under the provisions of this act. Each such return  
11 shall be made upon the oath or affirmation of the taxpayer.

1 18. Extension of time for filing return and paying tax. The  
2 director may for reasonable cause extend the time for the filing of  
3 any return due under this act and the payment of tax due thereon  
4 under such rules and regulations as he shall prescribe. The director  
5 may require the filing of a tentative return and the payment of an

6 estimated tax. Any additional tax which may be found to be due  
7 on the filing of a final return as allowed by such extension shall bear  
8 interest at the rate of 1% per month or fraction thereof from the  
9 original due date of such tax to the date of actual payment.

1 19. Enforcement. Regulations. The director shall enforce the  
2 provisions of this act and may adopt and enforce rules and regula-  
3 tions relating to the administration and enforcement of this  
4 \***[chapter.]**\* *act, which except as otherwise specifically provided*  
5 *in this act, shall be consistent with comparable provisions of the*  
6 *Internal Revenue Code and regulations issued thereunder.\** The  
7 director may prescribe the extent to which any ruling or regulation  
8 shall be applied with retroactive effect.

1 20. Report by director. Confidential information. The director  
2 shall publish in his annual report data showing the amount of taxes  
3 collected under this act, the amount of penalties assessed under  
4 the provisions of this act, and such classifications of taxpayers  
5 with such other facts as he deems pertinent and valuable. Such  
6 published figures shall not disclose the operations of any taxpayer  
7 in such manner as to permit the identification of such taxpayer by  
8 those unassociated with his business. The director, his attorney or  
9 agent, or any other officer or employee of the State involved in the  
10 administration of this act, shall not make known in any manner  
11 the amount or source of the taxes collected under this act or any  
12 particular thereof set forth or disclosed in any single return, or  
13 permit any return or copy thereof or any book containing any  
14 abstract or particular thereof to be seen or examined by any  
15 person, except so far as is necessary in carrying out the provisions  
16 of this act; except that the director, his attorney or agent may  
17 disclose such information or any information contained in any  
18 return filed under the provisions of this act, in the County Court  
19 or the Superior Court in any case therein pending in which said  
20 director, or any other department or agency of the State Govern-  
21 ment, is a party, or to any officer or department of the State  
22 Government when required in the course of duty or when there is  
23 reasonable cause to believe that there is infraction of any State  
24 law and to any proper officer of the United States Treasury Depart-  
25 ment or of any other state imposing a gross receipt, income or  
26 franchise tax reciprocating in this privilege. Any person who  
27 violates any provision of this section shall be fined not more than  
28 \$1,000.00 or imprisoned not more than 1 year or both such fine and  
29 imprisonment.

57

STATEMENT BY GOVERNOR BRENDAN BYRNE

August 4, 1975

A-3557

I have signed into law the supplemental appropriations bill and the tax and other revenue bills<sup>\*</sup> to finance it. These revenues will keep the buses and trains in operation and will restore the other programs that a majority of the Legislature adjudged to be vital to the public welfare.

Even with these restorations, New Jersey remains the most tight-fisted state in the nation. We will spend in this fiscal year about \$75 million less than we spent last year, despite the toll of continuing inflation which falls as heavily on government as it does on household budgets. And this Administration will continue its effort to cut corners and realize further economies wherever possible to make stretch every tax dollar as far as it will go.

The new taxes included in this revenue package are far less regressive than some of the taxes that the Legislature considered and wisely rejected. For the most part, the burden falls most heavily on segments of the economy that are able to bear that additional burden. And one of them -- the capital gains or unearned income tax -- is truly progressive.

Nevertheless, I take no particular pride in signing these taxes into law. And I noticed that few members of the Legislature exhibited much pride in enacting them. For this is strictly a stopgap revenue program and we must not lose sight of what it fails to do, as well as what it accomplishes.

This revenue package does nothing to meet our commitment -- the Legislature's and mine -- to fund the new education formula under which the State is to assume a greater portion of the costs of operating our public schools. The State Supreme Court has ordered that this be done and the Legislature has publicly declared its intention to deal with that commitment beginning on November 10.

\* A-1915  
A-3339  
A-3556  
A-3593  
A-3609  
A-3625  
A-3626  
A-3627  
A-3628  
A-3629

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AUG 15 1975

185 W. State Street  
Trenton, N. J.

This revenue package does nothing to reform New Jersey's patchwork tax structure and provide relief from rising and too often confiscatory property taxes, a goal to which I remain personally committed. The most we can say for these new taxes is that they will not make that tax structure measurably more regressive than it is.

And several of the bills I signed today are, by design, temporary sources of revenue. The funds they provide will, of necessity, have to be replaced from some other source next year if the programs they finance are to continue. These temporary measures, together with other fiscal facts of life, increase the already inevitable need for substantial new revenues next year.

The Legislature has demonstrated dramatically in the past several months that there are no easy taxes -- nor should there be. The true test of a potential new tax or tax increase should not be whether it will be easy to pass, but how equitably its burden will be distributed on those who will pay it.

I am confident that the Legislature will work for true tax reform in addressing our unmet obligations in the months ahead. I will, as always, be ready to work with it in a pursuit of that goal.

###

Attachment

The following bills were signed by Governor Byrne:

S-3170\* - Sponsored by Senator Joseph Merlino, D-Mercer, which increases the interest and penalties to be assessed in conjunction with the administration and enforcement of certain state tax laws.

A-1915 - Sponsored by Assemblyman Robert Shelton, D-Sussex, which provides for the taxation of banks under the same laws pursuant to which business corporations are taxed.

A-3339 - Sponsored by Assemblyman Steven Perskie, D-Atlantic, which prescribes the amount of excise taxes each "financial business corporation" shall pay during each of the years 1976, 1977 and 1978.

A-3556 - Sponsored by Assemblyman William Hamilton, D-Middlesex, which designated the "Tax on Capital Gains and Other Unearned Income Act," imposes a tax on capital gains and other unearned income.

A-3557 - Sponsored by Assemblyman George Barbour, D-Burlington, which supplements and amends the appropriations act for the support of the state government for the fiscal year ending June 30, 1976 (P.L. 1975, c.128)

A-3593 - Sponsored by Assemblyman Kenneth Gewertz, D-Gloucester, which transfers to the General State Fund amounts in the Unsatisfied Claim and Judgment Fund certified by the Board to exceed that necessary to meet pending claims and anticipated claims during the succeeding 12 months.

A-3609 - Sponsored by Assemblyman Kenneth Gewertz, D-Gloucester, which repeals P.L. 1952, c. 175, the Motor Vehicle Liability Security Fund Act, transferring all amounts remaining therein to the General State fund.

A-3625 - Sponsored by Assemblyman George Barbour, D-Burlington, which increases realty transfer fee from \$.50 to \$1.75 per \$500 consideration with certain exemptions.

A-3627 - Sponsored by Assemblyman William Hamilton, D-Middlesex, which increases the Unincorporated Business Tax to a rate of 3/8 of 1% for a period ending June 30, 1976.

\* A-3626 - SUBSTITUTED FOR S-3170