

54A: 5- 5

LEGISLATIVE HISTORY CHECKLIST

NJSA: 54A: 5-5 and 54A: 5-8

(Income tax--
eliminate
taxation of
pension of non-
residents)

LAWS OF: 1989

CHAPTER: 219

Bill No: A327

Sponsor(s): Frelinghuysen

Date Introduced: Pre-filed

Committee: Assembly: Appropriations

Senate: Revenue, Finance & Appropriations

Amended during passage: No

Date of Passage: Assembly: March 14, 1988

Senate: December 21, 1989

Date of Approval: December 29, 1989

Following statements are attached if available:

Sponsor statement: Yes

Committee Statement: Assembly: Yes

Senate: Yes

Fiscal Note: No

Veto Message: No

Message on signing: Yes

Following were printed:

Reports: No

Hearings: No

F.O. 1979-- #5--attached:

Bill mentioned from previous session A656--

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P.L.1989, CHAPTER 219, approved December 29, 1989

1988 Assembly No. 327

1 **AN ACT** excluding certain income of nonresidents from taxation
2 under the gross income tax and amending N.J.S. 54A:5-5 and
3 N.J.S. 54A:5-8.

4
5 **BE IT ENACTED** by the Senate and General Assembly of the
6 *State of New Jersey*:

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

8 54A:5-5. Nonresident individuals; taxable income. The
9 income of a nonresident individual shall be that part of his
10 income derived from sources within this State as defined in this
11 act, except that income of a nonresident individual shall not
12 include income derived from sources within this State from
13 pensions and annuities as set forth in subsection j. of N.J.S.
14 54A:5-1.

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

16 2. N.J.S. 54A:5-8 is amended to read as follows:

17 54A:5-8. Income from sources within this State for a
18 nonresident individual, estate or trust means the same as
19 compensation, net profits, gains, dividends, interest or income
20 enumerated and classified under chapter 5 of this act to the
21 extent that it is earned, received or acquired from sources
22 within this State:

23 (1) By reason of ownership or disposition of any interest in
24 real or tangible personal property in this State; or

25 (2) In connection with a trade, profession, occupation carried
26 on in this State or for the rendition of personal services
27 performed in this State; or

28 (3) As a distributive share of the income of an unincorporated
29 business, profession, enterprise, undertaking or other activity as
30 the result of work done, services rendered or other business
31 activities conducted in this State except as allocated to another

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

Matter underlined thus is new matter.

1 state pursuant to regulations promulgated by the director under
2 this act; or

3 (4) From intangible personal property employed in a trade,
4 profession, occupation or business carried on in this State.

5 Income from sources within this State for a nonresident
6 individual shall not include income from pensions and annuities
7 as set forth in subsection j. of N.J.S. 54A:5-1.

8 (Cf: N.J.S. 54A:5-8)

9 3. This act shall take effect immediately and shall be
10 retroactive to January 1 of the tax year in which enacted.

11

12

13

TAXATION - INCOME

14

Pensions and Retirement

15

16 **Eliminates the taxation of pension income received by**
17 **nonresidents under the New Jersey Gross income tax.**

ASSEMBLY, No. 327
STATE OF NEW JERSEY

PRE-FILED FOR INTRODUCTION IN THE 1988 SESSION

By Assemblyman FRELINGHUYSEN

1 **AN ACT** excluding certain income of nonresidents from taxation
2 under the gross income tax and amending N.J.S. 54A:5-5 and
3 N.J.S. 54A:5-8.

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6 State of New Jersey:

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13 pensions and annuities as set forth in subsection j. of N.J.S.
14 54A:5-1.

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18 nonresident individual, estate or trust means the same as
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22 within this State:

23 (1) By reason of ownership or disposition of any interest in
24 real or tangible personal property in this State; or

25 (2) In connection with a trade, profession, occupation carried
26 on in this State or for the rendition of personal services
27 performed in this State; or

28 (3) As a distributive share of the income of an unincorporated
29 business, profession, enterprise, undertaking or other activity as
30 the result of work done, services rendered or other business
31 activities conducted in this State except as allocated to another

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

Matter underlined thus is new matter.

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this act; or

3 (4) From intangible personal property employed in a trade,
profession, occupation or business carried on in this State.

5 Income from sources within this State for a nonresident
7 individual shall not include income from pensions and annuities
as set forth in subsection j. of N.J.S. 54A:5-1.

(Cf: N.J.S. 54A:5-8)

9 3. This act shall take effect immediately and shall be
retroactive to January 1 of the tax year in which enacted.

11

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13

TAXATION - INCOME

Pensions and Retirement

15

17 Eliminates the taxation of pension income received by
nonresidents under the New Jersey Gross income tax.

ASSEMBLY, No. 327
STATE OF NEW JERSEY

Introduced Pending Technical Review by Legislative Counsel
PRE-FILED FOR INTRODUCTION IN THE 1988 SESSION

By Assemblyman FRELINGHUYSEN

1 **AN ACT** excluding certain income of nonresidents from taxation
 under the gross income tax and amending P.L. 1976, c. 47.

3

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

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

7 54A:5-5. Nonresident individuals; taxable income. The
 income of a nonresident individual shall be that part of his
9 income derived from sources within this State as defined in this
 act, except that income of a nonresident individual shall not
11 include income derived from sources within this State from
 pensions and annuities as set forth in subsection j. of N.J.S.
13 54A:5-1.

 2. N.J.S. 54A:5-8 is amended to read as follows:

15 54A:5-8. Income from sources within this State for a
 nonresident individual, estate or trust means the same as
17 compensation, net profits, gains, dividends, interest or income
 enumerated and classified under chapter 5 of this act to the
19 extent that it is earned, received or acquired from sources
 within this State:

21 (1) By reason of ownership or disposition of any interest in
 real or tangible personal property in this State; or

23 (2) In connection with a trade, profession, occupation carried
 on in this State or for the rendition of personal services
25 performed in this State; or

27 (3) As a distributive share of the income of an unincorporated
 business, profession, enterprise, undertaking or other activity as
 the result of work done, services rendered or other business
29 activities conducted in this State except as allocated to another
 state pursuant to regulations, promulgated by the director under
31 this act; or

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

 Matter underlined thus is new matter.

1 (4) From intangible personal property employed in a trade,
profession, occupation or business carried on in this State.

3 Income from sources within this State for a nonresident
individual shall not include income from pensions and annuities
5 as set forth in subsection j. of N.J.S. 54A:5-1.

7 3. This act shall take effect immediately and shall be
retroactive to January 1 of the tax year in which enacted.

9

STATEMENT

11

This bill eliminates the taxation of pension income received
13 by nonresident individuals under the New Jersey gross income
tax. Pension income received by nonresident individuals from
15 New Jersey sources has been held as taxable under the New
Jersey gross income tax based upon Attorney General's Formal
17 Opinion No. 5 of 1979. That opinion determined that a
nonresident's pension income was income derived from a New
19 Jersey source if it was for work performed in New Jersey. This
bill allows those who do not reside in New Jersey, but who may
21 have earned a pension or part of a pension from working in this
State, to avoid taxation on their pension income deriving from
23 that work.

25

TAXATION - INCOME
Pensions and Retirement

27

29 Eliminates the taxation of pension income received by
nonresidents under the New Jersey Gross income tax.

11327

ASSEMBLY APPROPRIATIONS COMMITTEE

STATEMENT TO

ASSEMBLY, No. 327

STATE OF NEW JERSEY

DATED: FEBRUARY 8, 1988

The Assembly Appropriations Committee favorably reports Assembly Bill No. 327.

Assembly Bill No. 327 eliminates the taxation of pension income received by non-resident individuals under the New Jersey gross income tax. Pension income received by non-resident individuals from New Jersey sources has been held as taxable under the New Jersey gross income tax based upon Attorney General's Formal Opinion No. 5 of 1979. That opinion determined that a non-resident's pension income was income derived from a New Jersey source if it was for work performed in New Jersey. This bill allows those who do not reside in New Jersey, but who may have earned a pension or part of a pension from working in this State, to not pay the New Jersey gross income tax on the pension income derived from that work performed in New Jersey.

FISCAL IMPACT

On a similar bill in the previous session, the Division of Taxation estimated the revenue loss to the State to be approximately \$300,000 per year, from non-residents with this type of pension income.

This bill was pre-filed for introduction in the 1988 session pending technical review. As reported, the bill includes the changes required by technical review which has been performed.

SENATE REVENUE, FINANCE AND
APPROPRIATIONS COMMITTEE

STATEMENT TO

ASSEMBLY, No. 327

STATE OF NEW JERSEY

DATED: DECEMBER 1, 1988

The Senate Revenue, Finance and Appropriations Committee reported Assembly No. Bill 327 favorably.

Assembly Bill No. 327 eliminates the taxation of pension income received by non-resident individuals under the New Jersey gross income tax. Pension income received by non-resident individuals from New Jersey sources has been held as taxable under the New Jersey gross income tax based upon Attorney General's Formal Opinion No. 5 of 1979. That opinion determined that a non-resident's pension income was income derived from a New Jersey source if it was for work performed in New Jersey. This bill allows those who do not reside in New Jersey, but who may have earned a pension or part of a pension from working in this State, to not pay the New Jersey gross income tax on the pension income derived from that work performed in New Jersey.

This bill is identical to Senate Committee Substitute for Senate Bills 1967 and 1801.

FISCAL IMPACT

Although precise data are unavailable, the Division of Taxation estimates the revenue loss to the State to be approximately \$300,000 per year. The Office of Legislative Services has prepared a fiscal note to Senate Bill 1967, a similar bill, and questions the Division's estimate. The OLS, again noting the lack of precise data, estimates that the State will not experience any appreciable loss of gross income tax revenues.

A-21/S-3234, sponsored by Assemblyman Arthur Albohn, R-Morris, and Senator Francis McManimon, D-Mercer. The bill amends the definition of the system of plane coordinates for the official survey base for New Jersey.

A-327/S-1967, sponsored by Assemblyman Rodney Frelinghuysen, R-Morris, and Senators Richard Van Wagner, R-Middlesex, and John Dorsey, D-Middlesex. The bill eliminates this state's taxation of pension income received by non-residents from a public or private pension plan in New Jersey.

A-661, sponsored by Assemblymen Robert Smith, D-Middlesex, and Byron Baer, D-Bergen. The bill extends the "Conscientious Employee Protection Act" to those situations where an employee provides information regarding another employer with whom his employer has a business relationship.

A-934, sponsored by Assemblyman Walter Kern, R-Bergen, and Assemblywoman Joann Smith, R-Monmouth. The bill substitutes the term "council members" for "councilmen" in the Optional Municipal Charter Law.

A-1459, sponsored by Assemblyman J. Edward Kline, R-Atlantic. The bill requires the state to adopt an Emergency Operations Plan, and requires counties and municipalities to adopt emergency plans consistent with the state plan.

A-2104, sponsored by Assemblyman Jackie Mattison, D-Essex. The bill corrects an inaccurate reference to the "Bronze Shields Inc.," in the law providing leaves of absence for certain public employees.

A-3290/S-3796, sponsored by Assemblymen Robert Menendez and Bernard Kenny, both D-Hudson, and Senator John Lynch, D-Middlesex. The bill permits a county or municipality to amend its budget when it receives a special item of revenue from any public or private source.

A-3296, sponsored by Assemblyman Jimmy Zangari, D-Essex. The bill provides that chiropractic services shall be included as medical services covered by the Workers' Compensation Act.

civil service practices, should conduct an investigation to determine the continuing need for those positions and the appropriate civil service tenure, seniority and demotional rights of occupants of those positions.*

Very truly yours,
 JOHN J. DEGNAN
Attorney General

By: THEODORE A. WINARD
Assistant Attorney General

4. In a statement of the Senate, State Government, Federal and Interstate Relations Committee and the Veterans Affairs Committee, it is stated that the application of the provisions of the State Agency Transfer Act would grandfather in present employees of agencies whose functions are being transferred to the new Office of Administrative Law and that "grandfathering" would be inclusive of those employees presently serving as hearing officers. In our judgment, this statement of these Committees has no support in either the terms or purposes of the enactment. We cannot accept the same as conclusive of the overall legislative intent.

March 2, 1979

SIDNEY GLASER, *Director*
 Division of Taxation
 Taxation Building
 West State & Willow Streets
 Trenton, New Jersey 08625

FORMAL OPINION NO. 5—1979

Dear Director Glaser:

You have asked for our opinion as to whether pension income received by a non-resident of New Jersey from a public or private pension plan is subject to the Gross Income Tax Act. For the reasons set forth below, you are advised that such pension income is subject to the Tax Act.*

N.J.S.A. 54A:2-1 provides for imposition of the tax upon every individual's "New Jersey gross income as herein defined . . ." subject to certain deductions, limitations and modifications set forth in the act. The term "gross income" is defined in N.J.S.A.54A:5-1(j) to include

pensions and annuities except to the extent of exclusions in section 54A:6-10 hereunder, notwithstanding the provisions of [the sections of public pension laws which provide an exemption of such benefits from state taxation]. . . .

* The particular inquiry which prompted this request concerns non-resident retired teachers receiving pensions from the Teachers Pension and Annuity Fund. The Fund is a public State administered pension plan created pursuant to N.J.S.A. 18A:66-1 *et seq.*

It is clear, therefore, that the Legislature has imposed the tax upon all pension and annuity income. The only question is whether a pension income recipient is exempted from the income tax because he or she is no longer a resident of New Jersey.

With respect to non-residents, the Tax Act specifically provides that:

The income of a nonresident individual shall be that part of his income derived from sources within this State as defined in this act. [N.J.S.A. 54A:5-5.]

"Income derived from sources within New Jersey" is, in turn, defined to include:

compensation, net profits, gains, dividends, interest or income enumerated and classified under chapter 5 of this act to the extent that it is earned, received or acquired from sources within this State:

* * *

2. In connection with a trade, profession, occupation carried on in this State or for the rendition of personal services performed in this State; . . . [N.J.S.A. 54A5-8.]

Since pension income is "income enumerated and classified under Chapter 5", and since pension benefits received from a public or private pension plan for work performed in New Jersey are attributable to a profession or occupation carried on within New Jersey, such pension income is "income derived from sources within New Jersey" and is subject to the income tax.

Accordingly, you are advised that pension income received by non-residents from a public or private pension plan in New Jersey is subject to the New Jersey Gross Income Tax Act.

Very truly yours,
 JOHN J. DEGNAN
Attorney General

By: DOUGLAS G. SANBORN
Deputy Attorney General