

54A:6-10

LEGISLATIVE HISTORY CHECKLIST

WJSA 54A:6-10 (Gross Income Tax--Exempt lump-sum distributions--parallel Federal income tax provisions)

LAWS OF 1979 CHAPTER 79

Bill No. A1771

Sponsor(s) Schuck

Date Introduced Oct. 19, 1978

Committee: Assembly -----

Senate Revenue, Finance and Appropriations

Amended during passage Yes ~~xxx~~ Amendments during passage denoted by asterisks

Date of Passage: Assembly Nov. 30, 1978

Senate Jan. 22, 1979

Date of approval April 15, 1979

Following statements are attached if available:

Sponsor statement Yes ~~xxx~~

Committee Statement: Assembly ~~xxx~~ No

Senate Yes ~~xxx~~

Fiscal Note Yes ~~xxx~~

Veto message ~~xxx~~ No

Message on signing ~~xxx~~ No

Following were printed:

Reports ~~xxx~~ No

Hearings ~~xxx~~ No

EJ

9/1/78

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**ASSEMBLY, No. 1771**

**STATE OF NEW JERSEY**

INTRODUCED OCTOBER 19, 1978

By Assemblyman SCHUCK

(Without Reference)

AN ACT concerning the "New Jersey Gross Income Tax Act," and amending \***[N. J. S. 54A:5-1 and]**\* N. J. S. 54A:6-10.

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

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

2 54A:5-1. New Jersey gross income defined.

3 New Jersey gross income shall consist of the following categories  
4 of income:

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

8 b. Net profits from business. The net income from the operation  
9 of a business, profession, or other activity, after provisions for all  
10 costs and expenses incurred in the conduct thereof, determined  
11 either on a cash or accrual basis in accordance with the method of  
12 accounting allowed for Federal income tax purposes but without  
13 deduction of taxes based on income;

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

21 For the tax year 1976, any taxpayer with a tax liability under  
22 this subsection, or under the "Tax on Capital Gains and Other  
23 Unearned Income Act" (P. L. 1975, c. 172), shall not be subject  
24 to payment of an amount greater than the amount he would

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

25 have paid if either return had covered all capital transactions  
26 during the full tax year 1976; provided, however, that the rate  
27 which shall apply to any capital gain shall be that in effect on  
28 the date of the transaction. To the extent that any loss is used  
29 to offset any gain under (P. L. 1975, c. 172) it shall not be used  
30 to offset any gain under the "New Jersey Gross Income Tax  
31 Act" (P. L. 1976, c. 47).

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

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

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

67 transferor, or one or more of its shareholders (including persons  
68 who were shareholders immediately before the transfer), or any  
69 combination thereof, is in control of the corporation to which the  
70 assets are transferred;

71 (v) A recapitalization;

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

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

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

96 For purposes of this clause, the term "control" means the  
97 ownership of stock possessing at least 80% of the total combined  
98 voting power of all classes of stock entitled to vote and at least  
99 80% of the total number of shares of all other classes of stock of  
100 the corporation.

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

109 Notwithstanding any provisions hereof, upon every such ex-  
 110 change or conversion, the taxpayer's base for the stock or securi-  
 111 ties received shall be the same as the taxpayer's actual or attrib-  
 112 uted base for the stock, securities or property surrendered in  
 113 exchange therefor.

114 d. Net gains or net income derived from or in the form of rents,  
 115 royalties, patents, and copyrights.

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

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

122 g. Gambling winnings.

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

124 i. Income in respect of a decedent.

125 j. Pensions and annuities, *including distributions from rollover*  
 126 *accounts*, except to the extent of exclusions in section 54A:6-10  
 127 hereunder, notwithstanding the provisions of N. J. S. 18A:66-51,  
 128 P. L. 1973, c. 140, s. 41 (C. 43:6A-41), P. L. 1954, c. 84, s. 53  
 129 (C. 43:15A-53), P. L. 1944, c. 255, s. 17 (C. 43:16A-17), P. L. 1965,  
 130 c. 89, s. 45 (C. 53:5A-45), R. S. 43:10-14, P. L. 1943, c. 160, s. 22  
 131 (C. 43:10-18.22), P. L. 1948, c. 310, s. 22 (C. 43:10-18.71), P. L. 1954,  
 132 c. 218, s. 32 (C. 43:13-22-34), P. L. 1964, c. 275, s. 11 (C.  
 133 43:13-22.60), R. S. 43:10-57, P. L. 1938, c. 330, s. 13 (C. 43:10-105),  
 134 R. S. 43:13-44 and, P. L. 1943, c. 189, s. 5 (C. 43:13-37.5).

135 k. Distributive share of partnership income.

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

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

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

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

2 54A:6-10. Pensions and annuities.

3 Gross income shall not include that part of any amount received  
 4 as an annuity under an annuity, endowment, or life insurance  
 5 contract which bears the same ratio to such amount as the invest-  
 6 ment in the contract as of the annuity starting date bears to the  
 7 expected return under the contract as of such date. Where (1)

8 part of the consideration for an annuity, endowment, or life in-  
 9 surance contract is contributed by the employer, and (2) during  
 10 the 3-year period beginning on the date on which an amount is first  
 11 received under the contract as an annuity, the aggregate amount  
 12 receivable by the employee under the terms of the contract is equal  
 13 to or greater than the consideration for the contract contributed by  
 14 the employee, then all amounts received as an annuity under the  
 15 contract shall be excluded from gross income until there has been  
 16 so excluded an amount equal to the consideration for the contract  
 17 contributed by the employee.

18 In addition to that part of any amount received as an annuity  
 19 which is excludable from gross income as herein provided, gross  
 20 income shall not include payments of up to \$10,000.00 for a married  
 21 couple filing jointly, \$5,000.00 for a married person filing separately  
 22 or \$7,500.00 for a single taxpayer, which are received as an annuity,  
 23 endowment or life insurance contract, or payments of any such  
 24 amounts which are received as pension, disability, or retirement  
 25 benefits, under any public or private plan, whether the considera-  
 26 tion therefor is contributed by the employee or employer or both,  
 27 by any person who is 62 years of age or older or who, by virtue of  
 28 disability, is or would be eligible to receive payments under the  
 29 Federal Social Security Act.

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

32 *Gross income shall not include distributions from an employees'*  
 33 *trust described in Section 401 (a) of the 1954 Internal Revenue*  
 34 *Code, as amended (hereinafter referred to as "the Code"), which*  
 35 *is exempt from tax under Section 501 (a) of the Code if the distri-*  
 36 *bution, except the portion representing the employees' contribu-*  
 37 *tions, is rolled over in accordance with Section 402 (a) (5) or*  
 38 *Section 403 (a) (4) of the Code. The distribution shall be paid in*  
 39 *one or more installments which constitute a lump-sum distribution*  
 40 *within the meaning of Section 402 \*[(3)]\* \*(e)\* (4) (A) (deter-*  
 41 *mined without reference to subsection (e) (4) (B)), or be on ac-*  
 42 *count of a termination of a plan of which the trust is a part or, in*  
 43 *the case of a profit-sharing or stock bonus plan, a complete discon-*  
 44 *tinuance of contributions under such plan.*

1 \*[(3)]\* \*2.\* This act shall take effect immediately and be applica-  
 2 ble to the tax year 1978 and thereafter.

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14 the employee, then all amounts received as an annuity under the  
 15 contract shall be excluded from gross income until there has been  
 16 so excluded an amount equal to the consideration for the contract  
 17 contributed by the employee.

18 In addition to that part of any amount received as an annuity  
 19 which is excludable from gross income as herein provided, gross  
 20 income shall not include payments of up to \$10,000.00 for a married  
 21 couple filing jointly, \$5,000.00 for a married person filing separately  
 22 or \$7,500.00 for a single taxpayer, which are received as an annuity,  
 23 endowment or life insurance contract, or payments of any such  
 24 amounts which are received as pension, disability, or retirement  
 25 benefits, under any public or private plan, whether the considera-  
 26 tion therefor is contributed by the employee or employer or both,  
 27 by any person who is 62 years of age or older or who, by virtue of  
 28 disability, is or would be eligible to receive payments under the  
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 36 *bution, except the portion representing the employees' contribu-*  
 37 *tions, is rolled over in accordance with Section 402 (a) (5) or*  
 38 *Section 403 (a) (4) of the Code. The distribution shall be paid in*  
 39 *one or more installments which constitute a lump-sum distribution*  
 40 *within the meaning of Section 402 (3) (4) (A) (determined without*  
 41 *reference to subsection (e) (4) (B)), or be on account of a termina-*  
 42 *tion of a plan of which the trust is a part or, in the case of a profit-*  
 43 *sharing or stock bonus plan, a complete discontinuance of contribu-*  
 44 *tions under such plan.*

1 3. *This act shall take effect immediately and be applicable to the*  
 2 *tax year 1978 and thereafter.*

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#### STATEMENT

Assembly No. 1320 introduced May 1, 1978 by Assemblyman Schuck and Rand exempts from the New Jersey Gross Income Tax Act certain annuity distributions which are exempt from federal income taxation. This bill will also exempt from the New Jersey Gross Income Tax Act other types of lump-sum distributions which are treated the same as lump-sum annuity distributions for federal income tax purposes.

A1771 (1979)

SENATE REVENUE, FINANCE AND  
APPROPRIATIONS COMMITTEE

STATEMENT TO

**ASSEMBLY, No. 1771**

with Committee amendments

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**STATE OF NEW JERSEY**

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DATED: DECEMBER 4, 1978

This bill amends the "New Jersey Gross Income Tax Act" and excludes from gross income any lump-sum distribution from an employees' trust as described in the Internal Revenue Code where such distribution is also exempt from tax for federal income tax purposes. This bill will conform the State income tax treatment of "rollovers" to the Federal income tax treatment and recognizes the portability of pension benefits.

Under the terms of this bill an individual who receives a lump-sum distribution from a qualified retirement plan and who "rollsover" the distribution into an Individual Retirement Account or another qualified pension plan would defer the State income tax, as is allowed under the Federal income tax until withdrawn from the IRA or other qualified pension plan.



FISCAL NOTE TO  
**ASSEMBLY, No. 1771**

**STATE OF NEW JERSEY**

DATED: JANUARY 24, 1979

The Senate Reprint of Assembly Bill No. 1771 exempts from the Gross Income Tax Act lump-sum distributions which are treated the same as lump-sum annuity distributions for Federal income tax purposes.

The Division of Taxation states that precise figures are not available from which to make revenue loss estimates. However, from the information that is available, the division estimates that enactment of this legislation would cause a revenue loss of from \$200,000.00 to \$225,000.00 in fiscal 1979-80 and from \$225,000.00 to \$250,000.00 in fiscal 1980-81.

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The fiscal note is based on an estimate of costs rather than actual cost information.

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In compliance with written request received, there is hereby submitted a fiscal estimate for the above bill, pursuant to P. L. 1962, c. 27.