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SYNOPSIS
Consolidates certain business-related categories of gross income and
provides 20 year carryforward of certain net losses under gross income tax.

CURRENT VERSION OF TEXT
As reported by the Senate Budget and Appropriations Committee on
November 15, 2010, with amendments.

(Sponsorship Updated As Of: 1/7/2011)

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

1. Section 7 of P.L.2001, c.93 (C.44:10-92) is amended to read as follows:

7. a. Moneys deposited into or withdrawn from an individual development account by an account holder pursuant to subsection c. of section 5 of this act or matched by a community-based organization pursuant to paragraph (7) of subsection e. of section 5 of this act shall not be considered gross income otherwise includable as income pursuant to subsections a., b., k., and p. of N.J.S.54A:5-1 a. and q. of N.J.S.54A:5-1.

b. Interest earned by an individual development account shall not be considered gross income otherwise includable as income pursuant to subsection e. of N.J.S.54A:5-1.

c. Moneys deposited in an individual development account and the interest from an individual development account under this act shall not be taken into account in determining eligibility or the amount of assistance under State and federal means-tested programs pursuant to 42 U.S.C s.604(h) and 45 C.F.R. s.263.20.

(cf: P.L.2001, c.93, c.7)

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

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

a. Salaries, wages, tips, fees, commissions, bonuses, and other remuneration received for services rendered whether in cash or in property, and amounts paid or distributed, or deemed paid or distributed, out of a medical savings account that are not excluded from gross income pursuant to section 5 of P.L.1997, c.414 (C.54A:6-27).

b. Net profits from business. The net income from the operation of a business, profession or other activity after provision for all costs and expenses incurred in the conduct thereof, determined either on a cash or accrual basis in accordance with the method of accounting allowed for federal income tax purposes but without deduction of the amount of:

(1) taxes based on income;

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.
Matter enclosed in superscript numerals has been adopted as follows:

Senate SBA committee amendments adopted November 15, 2010.
(2) a civil, civil administrative, or criminal penalty or fine, including a penalty or fine under an administrative consent order, assessed and collected for a violation of a State or federal environmental law, an administrative consent order, or an environmental ordinance or resolution of a local governmental entity, and any interest earned on the penalty or fine, and any economic benefits having accrued to the violator as a result of a violation, which benefits are assessed and recovered in a civil, civil administrative, or criminal action, or pursuant to an administrative consent order. The provisions of this paragraph shall not apply to a penalty or fine assessed or collected for a violation of a State or federal environmental law, or local environmental ordinance or resolution, if the penalty or fine was for a violation that resulted from fire, riot, sabotage, flood, storm event, natural cause, or other act of God beyond the reasonable control of the violator, or caused by an act or omission of a person who was outside the reasonable control of the violator; and

(3) treble damages paid to the Department of Environmental Protection pursuant to subsection a. of section 7 of P.L.1976, c.141 (C.58:10-23.11f) for costs incurred by the department in removing, or arranging for the removal of, an unauthorized discharge upon the failure of the discharger to comply with a directive from the department to remove, or arrange for the removal of, a discharge.

(Deleted by amendment, P.L. ___, c. ___) (pending before the Legislature as this bill).

c. Net gains or income from disposition of property. Net gains or net income, less net losses, derived from the sale, exchange or other disposition of property, including real or personal, whether tangible or intangible as determined in accordance with the method of accounting allowed for federal income tax purposes. For the purpose of determining gain or loss, the basis of property shall be the adjusted basis used for federal income tax purposes, except as expressly provided for under this act, but without a deduction for penalties, fines, or economic benefits excepted pursuant to paragraph (2), or for treble damages excepted pursuant to paragraph (3) of subsection b. of this section.

A taxpayer's net gain or loss on the sale, exchange or other disposition of a share of an S corporation shall be calculated by increasing the adjusted basis of the share by an amount equal to the shareholder's net losses and deductions in respect of the share allowed and deducted from income for federal income tax purposes, not including any personal net operating loss deductions, to the extent that such net losses were not offset by the taxpayer's pro rata share of S corporation income otherwise subject to taxation pursuant to subsection p. of this section in respect of another S corporation, subject to rules of priority and assignment determined by the director.
For the tax year 1976, any taxpayer with a tax liability under this subsection, or under the "Tax on Capital Gains and Other Unearned Income Act," P.L.1975, c.172 (C.54:8B-1 et seq.), shall not be subject to payment of an amount greater than the amount he would have paid if either return had covered all capital transactions during the full tax year 1976; provided, however, that the rate which shall apply to any capital gain shall be that in effect on the date of the transaction. To the extent that any loss is used to offset any gain under P.L.1975, c.172, it shall not be used to offset any gain under the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq.

The term "net gains or income" shall not include gains or income derived from obligations which are referred to in clause (1) or (2) of N.J.S.54A:6-14 of this act or from securities which evidence ownership in a qualified investment fund as defined in section 2 of P.L.1987, c.310 (C.54A:6-14.1). The term "net gains or net income" shall not include gains or income from transactions to the extent to which nonrecognition is allowed for federal income tax purposes. The term "sale, exchange or other disposition" shall not include the exchange of stock or securities in a corporation a party to a reorganization in pursuance of a plan of reorganization, solely for stock or securities in such corporation or in another corporation a party to the reorganization and the transfer of property to a corporation by one or more persons solely in exchange for stock or securities in such corporation if immediately after the exchange such person or persons are in control of the corporation. For purposes of this clause, stock or securities issued for services shall not be considered as issued in return for property.

For purposes of this clause, the term "reorganization" means--

(i) A statutory merger or consolidation;

(ii) The acquisition by one corporation, in exchange solely for all or part of its voting stock (or in exchange solely for all or a part of the voting stock of a corporation which is in control of the acquiring corporation) of stock of another corporation if, immediately after the acquisition, the acquiring corporation has control of such other corporation (whether or not such acquiring corporation had control immediately before the acquisition);

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

(iv) A transfer by a corporation of all or a part of its assets to another corporation if immediately after the transfer the transferee, or one or more of its shareholders (including persons who were shareholders immediately before the transfer), or any combination
thereof, is in control of the corporation to which the assets are transferred;

(v) A recapitalization;

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

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

(viii) A transaction otherwise qualifying under subclause (i) shall not be disqualified by reason of the fact that stock of a corporation (referred to in this subclause as the "controlling corporation") which before the merger was in control of the merged corporation is used in the transaction, if after the transaction, the corporation surviving the merger holds substantially all of its properties and of the properties of the merged corporation (other than stock of the controlling corporation distributed in the transaction); and in the transaction, former shareholders of the surviving corporation exchanged, for an amount of voting stock of the controlling corporation, an amount of stock in the surviving corporation which constitutes control of such corporation.

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

For purposes of this clause, the term "a party to a reorganization" includes a corporation resulting from a reorganization, and both corporations, in the case of a reorganization resulting from the acquisition by one corporation of stock or properties of another. In the case of a reorganization qualifying under subclause (i) by reason of subclause (vii) the term "a party to a reorganization" includes the controlling corporation referred to in such subclause (vii).

Notwithstanding any provisions hereof, upon every such exchange or conversion, the taxpayer’s basis for the stock or securities received shall be the same as the taxpayer’s actual or attributed basis for the stock, securities or property surrendered in exchange therefor.

d. [Net gains or net income derived from or in the form of rents, royalties, patents, and copyrights] (Deleted by amendment, P.L. , c. ) (pending before the Legislature as this bill).

e. Interest, except interest referred to in clause (1) or (2) of N.J.S.54A:6-14, or distributions paid by a qualified investment fund
as defined in section 2 of P.L.1987, c.310 (C.54A:6-14.1), to the extent provided in that section.
  f. Dividends. "Dividends" means any distribution in cash or property made by a corporation, association or business trust that is not an S corporation, (1) out of accumulated earnings and profits, or (2) out of earnings and profits of the year in which such dividend is paid and any distribution in cash or property made by an S corporation, as specifically determined pursuant to section 16 of P.L.1993, c.173 (C.54A:5-14). The term "dividends" shall not include distributions paid by a qualified investment fund as defined in section 2 of P.L.1987, c.310 (C.54A:6-14.1), to the extent provided in that section.
  g. Gambling winnings.
  h. Net gains or income derived through estates or trusts.
  i. Income in respect of a decedent.
  k. [Distributive share of partnership income] (Deleted by amendment, P.L. , c. ) (pending before the Legislature as this bill).
  l. Amounts received as prizes and awards, except as provided in N.J.S.54A:6-8 and N.J.S.54A:6-11 hereunder.
  m. Rental value of a residence furnished by an employer or a rental allowance paid by an employer to provide a home.
  n. Alimony and separate maintenance payments to the extent that such payments are required to be made under a decree of divorce or separate maintenance but not including payments for support of minor children.
  o. Income, gain or profit derived from acts or omissions defined as crimes or offenses under the laws of this State or any other jurisdiction.
p. [Net pro rata share of S corporation income] (Deleted by amendment, P.L. , c. ) (pending before the Legislature as this bill).

q. Net business income. The excess of any net gain or net income derived from or in the form of: (1) the operation of a business, profession or other activity; (2) rents, royalties, patents, and copyrights; (3) the distributive share of partnership income; and (4) pro rata share of S corporation income, less all costs and expenses and any net loss incurred in or derived from: (1) the conduct of a business, profession or other activity; (2) rents, royalties, patents, and copyrights; (3) the distributive share of partnership income; and (4) pro rata share of S corporation income.

For purposes of determining net business income, the net income from, and all costs and expenses incurred in, the operation or the conduct of a “business, profession or other activity” shall be determined either on a cash or accrual basis in accordance with the method of accounting allowed for federal income tax purposes but without deduction of the amount of:

(1) taxes based on income;
(2) a civil, civil administrative, or criminal penalty or fine, including a penalty or fine under an administrative consent order, assessed and collected for a violation of a State or federal environmental law, an administrative consent order, or an environmental ordinance or resolution of a local governmental entity, and any interest earned on the penalty or fine, and any economic benefits having accrued to the violator as a result of a violation, which benefits are assessed and recovered in a civil, civil administrative, or criminal action, or pursuant to an administrative consent order. The provisions of this paragraph shall not apply to a penalty or fine assessed or collected for a violation of a State or federal environmental law, or local environmental ordinance or resolution, if the penalty or fine was for a violation that resulted from fire, riot, sabotage, flood, storm event, natural cause, or other act of God beyond the reasonable control of the violator, or caused by an act or omission of a person who was outside the reasonable control of the violator; and
(3) treble damages paid to the Department of Environmental Protection pursuant to subsection a. of section 7 of P.L.1976, c.141 (C.58:10-23.11f) for costs incurred by the department in removing, or arranging for the removal of, an unauthorized discharge upon the failure of the discharger to comply with a directive from the department to remove, or arrange for the removal of, a discharge.

(cf: P.L.1998, c.57, s.1)

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

54A:5-2. Losses. Losses which occur within one category of gross income may be applied against other sources of gross income within the same category of gross income during the taxable year.
except that a net loss which occurs within subsection q. of N.J.S.54A:5-1 may be carried forward, in accordance with the terms and conditions as may be prescribed by the director, and applied against gross income in subsection q. of N.J.S.54A:5-1 during each of the 20 taxable years following the taxable year in which the net loss occurs. However, a net loss in one category of gross income may not be applied against gross income in another category of gross income.¹

(cf. P.L.1976, c.47. s.54A:5-2)

³ [3.] ⁴ ¹ Section 3 of P.L.1977, c.273 (C.54A:6-15) is amended to read as follows:

3. Other retirement income. a. Gross income shall not include income:

for taxable years beginning before January 1, 2000, of up to $10,000 for a married couple filing jointly, $5,000 for a married person filing separately, or $7,500 for an individual filing as a single taxpayer or an individual determining tax pursuant to subsection a. of N.J.S.54A:2-1;

for the taxable year beginning on or after January 1, 2000, but before January 1, 2001, of up to $12,500 for a married couple filing jointly, $6,250 for a married person filing separately, or $9,375 for an individual filing as a single taxpayer or an individual determining tax pursuant to subsection a. of N.J.S.54A:2-1;

for the taxable year beginning on or after January 1, 2001, but before January 1, 2002, of up to $15,000 for a married couple filing jointly, $7,500 for a married person filing separately, or $11,250 for an individual filing as a single taxpayer or an individual determining tax pursuant to subsection a. of N.J.S.54A:2-1;

for the taxable year beginning on or after January 1, 2002, but before January 1, 2003, of up to $17,500 for a married couple filing jointly, $8,750 for a married person filing separately, or $13,125 for an individual filing as a single taxpayer or an individual determining tax pursuant to subsection a. of N.J.S.54A:2-1;

for taxable years beginning on or after January 1, 2003, gross income shall not include income of up to $20,000 for a married couple filing jointly, $10,000 for a married person filing separately, or $15,000 for an individual filing as a single taxpayer or an individual determining tax pursuant to subsection a. of N.J.S.54A:2-1, when received in any tax year by a person aged 62 years or older who received no income in excess of $3,000 from one or more of the sources enumerated in subsections [a., b., k. and p. of N.J.S.54A:5-1] a. and q. of N.J.S.54A:5-1, but for taxable years beginning on or after January 1, 2005, only if the taxpayer has gross income for the taxable year of not more than $100,000, provided, however, that the total exclusion under this subsection and that allowable under N.J.S.54A:6-10 shall not exceed the amounts of the exclusions set forth in this subsection.
b. In addition to the exclusion provided under N.J.S.54A:6-10 and subsection a. of this section, gross income shall not include income of up to $6,000 for a married couple filing jointly or an individual determining tax pursuant to subsection a. of N.J.S.54A:2-1, or $3,000 for a single person or a married person filing separately, who is not covered under N.J.S.54A:6-2 or N.J.S.54A:6-3, but who would be eligible in any year to receive payments under either section if he or she were covered thereby.

(cf: P.L.2005, c.130, s.2)

This act shall take effect immediately and apply to taxable years beginning on or after January 1 [next following the date of enactment], 2011.