



## Estates and Trusts

Bulletin GIT-12

### **Introduction**

*Estates and trusts are taxpayers under the Gross Income Tax Act (N.J.S.A. 54A:1-1 et seq.) and are required to file a return and pay taxes (including estimated tax), penalties, and interest if they meet the filing requirements. This bulletin explains the filing and income reporting requirements of estates and trusts and of beneficiaries.*

This document is designed to provide guidance to taxpayers and is accurate as of the date issued. Subsequent changes in tax law or its interpretation may affect the accuracy of this publication.

### **Definitions**

**Fiduciary** means a guardian, trustee, executor, administrator, receiver, conservator, or any person acting in any fiduciary, trust, or similar capacity for any person.

**Nonresident estate or trust** means an estate or trust that is not a resident.

**Resident estate** means the estate of a decedent who at death was domiciled in New Jersey.

**Resident trust** means:

- A trust, or a portion of a trust, consisting of property transferred by will of a decedent who at his death was domiciled in New Jersey; or
- A trust, or portion of a trust, consisting of the property of:
  - (a) a person domiciled in New Jersey at the time such property was transferred to the trust, if such trust or portion of a trust was then irrevocable; or if it was then revocable and has not subsequently become irrevocable; or
  - (b) a person domiciled in New Jersey at the time such trust, or portion of a trust, became irrevocable, if it was revocable when such property was transferred to the trust but has subsequently become irrevocable.

**Revocable trust** means a trust, or portion of a trust, that is subject to a power, exercisable immediately or at any future time, to revest, or restore, title in the person whose property

constitutes such trust or portion of a trust, and a trust or portion of a trust becomes irrevocable when the possibility that such power may be exercised has been terminated.

**Taxpayer** means any individual, estate, or trust required to file a return or to pay taxes, interest, and penalties under the New Jersey Gross Income Tax Act, or whose income in whole or in part is subject to tax (see [N.J.S.A. 54A:1-2](#)).

## Estates and Trusts

### Filing Requirements

The fiduciary of every **resident estate or trust** must file a New Jersey Gross Income Tax Fiduciary Return ([Form NJ-1041](#)) if gross income, before the exemption or deductions, was more than \$10,000 for the tax year (see [N.J.S.A. 54A:8-3.1](#)).

The fiduciary of every **nonresident estate or trust** that derived income from New Jersey sources must file Form NJ-1041 if gross income, before the exemption or deductions, received from all sources (both inside and outside New Jersey) during the tax year was more than \$10,000.

For a part-year return, the filing threshold amount is prorated based on the number of months covered by the return.

### New Jersey Tax Nexus

A resident estate or trust does not have sufficient nexus with New Jersey and is not subject to New Jersey tax if it:

- Does not have any tangible assets in New Jersey; **and**

- Does not have any income from New Jersey sources; **and**
- Does not have any trustees or executors in New Jersey.

The fiduciary of an estate or trust that meets *all* of the above requirements must file Form NJ-1041, check the box on Line 26, and include a statement certifying that the estate or trust is not subject to tax.

An institutional trustee has New Jersey tax nexus if the institution conducts business in offices located in New Jersey, even if the office administering the estate or trust is located outside New Jersey.

### Grantor Trusts

Grantor trusts let the grantor retain control over the income or corpus, or both, and the grantor will be treated as the owner of the property and its income. The result is that the income and deductions attributable to the trust are taxable to the grantor and not to the beneficiary.

Grantor trusts must file a New Jersey fiduciary return. If the grantor trust income is reportable by or taxable to the grantor for Federal income tax purposes, it also is taxable to the grantor, and not the trust, for New Jersey income tax purposes. See the [NJ-1041 instructions](#) for information on completing the distributions section on a grantor trust return.

### Charitable Remainder/Unitrusts

Charitable remainder trusts and charitable unitrusts are not operated exclusively for charitable purposes and are subject to income tax filing requirements. For further information, see

Technical Bulletin [TB-64](#), *Charitable Remainder Trusts*, which also discusses the tax exemption for the income of *exclusively* charitable trusts.

### **Electing Small Business Trusts**

A Federal Electing Small Business Trust may make a New Jersey election to be taxed in the same manner as for Federal tax purposes. [Form NJ-1041SB](#) contains the New Jersey election information and filing instructions.

### **Estates Other Than of a Deceased Individual**

For New Jersey tax purposes, the term “estate” refers only to the estate of a deceased person. The New Jersey income tax liability of a minor, a person adjudicated incompetent, or of any person who is suffering from some other legal disability must be reported on a New Jersey resident return ([Form NJ-1040](#)) or non-resident return ([Form NJ-1040NR](#)) filed under the name and identification number of the disabled individual and signed by the guardian or conservator.

### **Trusts Exempt From Tax**

Trusts that form part of a pension or profit sharing plan and trusts that are taxable as corporations for Federal income tax purposes are not subject to New Jersey income tax and are not required to file a fiduciary return (see [N.J.S.A. 54A:2-1](#) and [54A:2-3](#)).

### **Tax Year**

For New Jersey purposes, the tax year of the estate or trust must be the same as the tax year used for Federal purposes. The tax year cannot be longer than 12 months. For further

information on tax year requirements, see the [NJ-1041 instructions](#).

### **Estimated Tax Payments**

An estate or trust is required to make quarterly estimated tax payments for any tax year in which its estimated tax is expected to be more than \$400 (see [N.J.S.A. 54A:8-4](#)).

**Exceptions.** For the estimated tax requirements for estates and trusts, New Jersey follows the Federal exception under I.R.C. Section 6654. Therefore, the following are not required to make estimated payments for any tax year ending before the date that is two years after the decedent’s death:

- A decedent’s estate or
- A trust that was treated as owned by the decedent if the trust will receive the residue of the decedent’s estate under the will, or if no will is admitted to probate, the trust primarily responsible for paying debts, taxes, and expenses of administration.

### **Income Reporting Requirements**

Net losses in one category of income cannot be applied against income or gains in another category. **In case of a net loss in any category, “0” is entered for that category** (see [N.J.S.A. 54A:5-2](#)).

### **Resident Estates and Trusts**

A resident estate or trust must report all taxable income received during the tax year from all sources, both inside and outside New Jersey. Income from “exempt” obligations is not taxable and is not included on the taxable income lines of Form NJ-1041. Information on income from

exempt obligations is available in Tax Topic Bulletin [GIT-5](#), *Exempt Obligations*.

## Nonresident Estates and Trusts

**Income from all sources.** A nonresident estate's or trust's income from all sources, both inside and outside New Jersey, is determined and reported as if the estate or trust were a resident estate or trust.

**New Jersey source income.** Income from sources within New Jersey for a nonresident estate or trust means those items of income and gain that are earned, received, or acquired from the following sources:

- Remuneration received for services rendered in New Jersey
- Net income from a business, trade, or profession located in New Jersey
- Rents or royalties from real and tangible personal property or from other business activities located in New Jersey
- Net gains from disposition of real property or business property located in New Jersey
- Net gambling winnings from a casino, racetrack, or other source located in New Jersey and a New Jersey Lottery winning in an amount exceeding \$10,000
- Net distributive share of partnership income allocated to New Jersey
- Net pro rata share of S corporation income allocated to New Jersey from a New Jersey electing S corporation

New Jersey source income does *not* include income or gains from intangible personal property unless it is earned, received, or acquired in connection with a trade, business, or occupation

carried on in New Jersey (see N.J.A.C. 18:35-1.1). The distribution of interest from a corporate bond or dividends from publicly traded stocks is not New Jersey source income.

## Grantor Trusts

If a grantor trust's income is reportable by or taxable to the grantor for Federal income tax purposes, it also is taxable to the grantor for New Jersey income tax purposes. If the trust's gross income exceeds \$10,000 for the tax year, a New Jersey fiduciary return (Form NJ-1041) must be filed. All of the grantor trust's income must be reported, and distributions (to the grantor) equal to the total income reported are deducted. The grantor's name, address, and identification number must be listed on the Beneficiary's or Grantor's Share of Income, Schedule NJK-1 (Form NJ-1041).

## Pension, Annuity, and IRA Income

In general, pension and annuity income received by a survivor or beneficiary, whether in the form of periodic payments or in a lump sum, are taxable to the extent that they exceed the decedent's previously taxed contributions. If the pension or annuity was subject to tax under the New Jersey Transfer Inheritance Tax Act, the value of the pension or annuity as determined and taxed for New Jersey transfer inheritance tax purposes is deemed to be the decedent's previously taxed contributions and is deductible in determining the taxable pension, annuity, or IRA income received. For more information, see Tax Topic Bulletin [GIT-1](#), *Pensions and Annuities*.

Pension, annuity, or IRA income paid or distributed to a *nonresident* estate or trust is includible in income from all sources and reported on the

“Other Income” line of Form NJ-1041 but is excludable from “New Jersey source income” (Schedule G, Form NJ-1041.) See N.J.S.A. 54A:5-8.b.

## **Deductions**

The only deductions specifically provided for and allowable under the Gross Income Tax Act on the New Jersey fiduciary return (Form NJ-1041) are an exemption, commissions based on income, the Health Enterprise Zone deduction (see Technical Bulletin [TB-56](#), *Health Enterprise Zones*), the alternative business calculation adjustment, and distributions. Deductions are *not* allowed for fixed fee commissions, commissions based on asset value, legal fees, accounting fees or executor fees, or administrative expenses.

## **Commissions Based on Income**

A deduction is allowed for commissions that are calculated based on the income of an estate or trust and that are paid to an executor or trustee.

## **Alternative Business Calculation Adjustment**

Estates or trusts that have losses in certain business-related categories of income can utilize those losses to calculate an adjustment (“Alternative Business Calculation Adjustment”) to their taxable income on Form NJ-1041. In addition, taxpayers can carry forward unused losses in those categories for a period of 20 years to calculate future adjustments.

Income/losses in the following four categories are included in the adjustment calculation: net profits from business; net gains or net income from rents, royalties, patents, and copyrights; distributive share of partnership income; and

net pro rata share of S corporation income. Complete Schedules [NJ-BUS-1](#), Business Income Summary Schedule (Form NJ-1041), and [NJ-BUS-2](#), Alternative Business Calculation Adjustment (Form NJ-1041), to calculate the amount of adjustment or loss carryforward. The percentage used to calculate the adjustment was phased in over a five-year period that began in 2012. For Tax Year 2016 and after, the percentage used to calculate the adjustment is 50%.

## **Distributions**

If the terms of the governing instrument of an estate or trust require any amount of income to be accumulated and added to the principal for ultimate distribution to any religious, charitable, scientific, literary, or educational organization, and such income is permanently and irrevocably set aside for such purposes, it will be treated as having been paid, credited, or required to be distributed to the charitable beneficiary.

The same treatment is afforded to any income required to be held in trust for the use of any charitable beneficiary or organization.

The distribution deduction represents the actual amount of income distributed or required to be distributed for the taxable period covered by the return. Exempt obligation income (tax-free bonds, etc.), however, is not included in the distribution deduction, nor is it included in the taxable income lines on Form NJ-1041.

When all of the beneficiaries of an estate are exempt charitable organizations, the estate’s income is deemed to have been paid or credited to the tax-exempt charities in the same year as earned. The paid and deemed distributions are reported as paid, resulting in no taxable income for the estate.

## Beneficiaries

### Filing Requirements

A **resident beneficiary** must file a New Jersey resident return ([Form NJ-1040](#)) or fiduciary return ([Form NJ-1041](#)) if gross income, before exemptions or deductions, received from all sources (both inside and outside New Jersey) during the tax year was more than \$10,000 (filing status single; married/CU partner, filing separate return; or estates or trusts) or more than \$20,000 (filing status married/CU couple, filing joint return; head of household; or qualifying widow(er)/surviving CU partner).

A **nonresident beneficiary** that derived income from New Jersey sources must file a New Jersey nonresident return ([Form NJ-1040NR](#)) or fiduciary return (Form NJ-1041) if the gross income, before exemptions or deductions, received from all sources (both inside and outside New Jersey) during the tax year was more than \$10,000 (filing status single; married/CU partner, filing separate return; or estates or trusts) or more than \$20,000 (filing status married/CU couple, filing joint return; head of household; or qualifying widow(er)/surviving CU partner).

A beneficiary filing a part-year *resident* return whose income from all sources (both inside and outside New Jersey) for the *entire* year exceeds the filing threshold amount for his/her filing status is subject to New Jersey income tax for that portion of the income received while a resident of New Jersey.

A beneficiary filing a part-year nonresident return whose income from all sources (both inside and outside New Jersey) for the entire year exceeds the filing threshold amount for their filing

status is subject to New Jersey income tax on income earned from New Jersey sources, even though the income from New Jersey sources reported for the period of nonresidence was equal to or less than the filing threshold amount.

For more information about filing individual part-year returns, see [GIT-6](#), *Part-Year Residents*.

If a beneficiary's income is equal to or less than the filing threshold amounts described above, a New Jersey income tax return is not required (see [N.J.S.A. 54A:2-4](#) and [54A:8-3.1](#)).

### Income Reporting Requirements

Net losses in one category of income cannot be applied against income or gains in another category. **In case of a net loss in any category, "0" is entered for that category.**

### Income Category and Return Year

The income distributed to a beneficiary is reported on the beneficiary's income tax return in the category "Income From Estates and Trusts," which is part of the tax return line "Other" income.

The ending date of the tax year of the estate or trust determines the tax year in which the beneficiary reports income from the estate or trust. For example, an estate's fiscal tax year is April 1, 2015, to March 31, 2016. The beneficiary reports income from the estate on his/her 2016 calendar year return since the estate's tax year ended in 2016.

### Distributed Income

In general, the income or gains of an estate or trust that were paid, deemed to have been

paid, credited, or required to be distributed to a beneficiary are taxable to the beneficiary (see N.J.S.A. 54A:5-3).

An estate or trust that files a New Jersey fiduciary return must provide each beneficiary with a Schedule NJK-1 (Form NJ-1041) that lists the beneficiary's reportable income distributed by the estate or trust and the New Jersey source income reportable by a nonresident beneficiary.

**Beneficiary who has not received an NJK-1.**

Due to differences in reporting requirements under the New Jersey Gross Income Tax Act compared to reporting under the Internal Revenue Code, beneficiaries will need to get information from the fiduciary in order to properly determine the distributed income to report on a New Jersey income tax return. Explanations of the New Jersey income reporting requirements can be found in the New Jersey resident (Form NJ-1040), nonresident (Form NJ-1040NR), and fiduciary (Form NJ-1041) return instructions. In addition, Tax Topic Bulletins [GIT-9P](#), *Income From Partnerships*, and [GIT-9S](#), *Income From S Corporations*, and numerous other publications may be of interest. The instructions and publications are available on the Division of Taxation's [website](#).

**Resident Beneficiary**

A resident beneficiary reports all income distributed from estates or trusts.

**Nonresident Beneficiary**

**Income from all sources.** A nonresident beneficiary's income from all sources is determined and reported as if the beneficiary were a New Jersey resident, and the total is used to determine

whether the beneficiary must file a New Jersey income tax return (see N.J.S.A. 54A:2-4).

**New Jersey source income.** For determining whether income is "New Jersey source income," income derived through an estate or trust retains the same character in the hands of the beneficiary as it had in the hands of the estate or trust. For example, a distribution of a trust's income from rental property located in New Jersey retains its character as New Jersey source income for the beneficiary receiving the distribution.

Under N.J.S.A. 54A:5-8, a nonresident beneficiary's New Jersey source income from an estate or trust includes:

- Remuneration received for services rendered in New Jersey
- Net income from a business, trade, or profession located in New Jersey
- Rents or royalties from real and tangible personal property or from other business activities located in New Jersey
- Net gains from disposition of real property or business property located in New Jersey
- Net gambling winnings from a casino, race-track, or other source located in New Jersey and a New Jersey Lottery winning in an amount exceeding \$10,000
- Net distributive share of partnership income allocated to New Jersey
- Net pro rata share of S corporation income allocated to New Jersey from a New Jersey electing S corporation

New Jersey source income does *not* include income or gains from intangible personal property unless it is earned, received, or acquired in

connection with a trade, business, or occupation carried on in New Jersey (see N.J.A.C. 18:35-1.1). The distribution of interest from a corporate bond or dividends from publicly traded stocks is not New Jersey source income.

### **Pension, Annuity, and IRA Income**

In general, pension and annuity income received by a survivor or beneficiary, whether in the form of periodic payments or in a lump sum, are taxable to the extent that they exceed the decedent's previously taxed contributions.

If the pension or annuity was subject to tax under the New Jersey Transfer Inheritance Tax Act, the value of the pension or annuity as determined and taxed for New Jersey transfer inheritance tax purposes is deemed to be the decedent's previously taxed contributions and deductible in determining the taxable pension, annuity, or IRA income received.

Taxable portions of pension, annuity, or IRA income that are paid directly to an individual beneficiary are reportable in the category "Income in Respect of a Decedent" and included on Form NJ-1040, NJ-1040NR, or NJ-1041 on the "Other" income line. This income does not qualify for the pension exclusion.

Taxable portions of pension, annuity, or IRA income distributed from an estate or trust to a beneficiary are reportable by the beneficiary as "Income From Estates and Trusts" on the "Other" income line and do not qualify for the pension exclusion.

A beneficiary's rollover of distributions from an inherited traditional IRA, Roth IRA, or other eligible plan are excludable from New Jersey

income if the rollover qualifies for deferral for Federal income tax purposes. The income is reportable when it is reportable for Federal tax purposes.

Pension or annuity income paid or distributed to a nonresident is not New Jersey source income (see N.J.S.A. 54A:5-8.b.), but is includible in income from all sources (Column A of Form NJ-1040NR.)

**Roth IRA.** Distributions from a Roth IRA are not subject to New Jersey tax if they are not subject to tax for Federal purposes.

Information on determining the New Jersey taxable income from IRAs, pensions, and annuities can be found in Tax Topic Bulletins [GIT-1](#), *Pensions and Annuities*, and [GIT-2](#), *IRA Withdrawals*.

### **Grantor Trusts**

The grantor should report the trust's income as if it were earned by the grantor. The income is reported in the same income categories as reported on their NJK-1, Form NJ-1041 (i.e., interest, dividends, partnership income) and not as income from estates and trusts.

### **Tax-Exempt Charitable Organization**

If a beneficiary is an exempt charitable organization, no tax will be imposed on the income distributed to the exempt charitable organization, even if the income is permanently and irrevocably set aside in an invested income account.

## For More Information

### Online

- Division of Taxation website:  
[www.njtaxation.org](http://www.njtaxation.org)
- Email general State tax questions:  
[nj.taxation@treas.nj.gov](mailto:nj.taxation@treas.nj.gov)  
Do not include confidential information such as Social Security or Federal tax identification numbers, liability or payment amounts, dates of birth, or bank account numbers in your email.
- Subscribe to *NJ Tax E-News*, the Division of Taxation's online information service, at:  
[www.state.nj.us/treasury/taxation/listservice.shtml](http://www.state.nj.us/treasury/taxation/listservice.shtml)

### In Person

Visit a New Jersey Division of Taxation regional office. For the address of the regional office nearest you call the Automated Tax Information System at 1-800-323-4400 or visit [www.state.nj.us/treasury/taxation/ot1.shtml](http://www.state.nj.us/treasury/taxation/ot1.shtml)

### By Phone

- Call the Division of Taxation's Customer Service Center at **609-292-6400**.
- Text Telephone Service (TTY/TDD) for Hearing-Impaired Users: **1-800-286-6613** (toll-free within NJ, NY, PA, DE, and MD) or **609-984-7300**. These numbers are accessible *only* from TTY devices. Submit a text message on any New Jersey tax matter and receive a reply through NJ Relay Services (711).

### In Writing

New Jersey Division of Taxation  
Technical Information Unit  
PO Box 281  
Trenton, NJ 08695-0281

## Forms and Publications

- Visit the Division of Taxation's website:  
Forms — [www.state.nj.us/treasury/taxation/forms.shtml](http://www.state.nj.us/treasury/taxation/forms.shtml)  
Publications — [www.state.nj.us/treasury/taxation/pubs.shtml](http://www.state.nj.us/treasury/taxation/pubs.shtml)
- Call the Forms Request System at **1-800-323-4400** (within NJ, NY, PA, DE, and MD) or **609-826-4400** (Touch-tone phones only) to have printed forms or publications mailed to you.  
**Note:** Due to budgetary constraints, supplies are limited and only certain forms and publications can be ordered through this System.