

CHAPTER 256

AN ACT exempting certain investment clubs from certain partnership fee and payment requirements, amending P.L.2002, c.40 and N.J.S.54A:8-6.

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

1. Section 12 of P.L.2002, c.40 (C.54:10A-15.11) is amended to read as follows:

C.54:10A-15.11 Tax payment by certain partnerships; definitions.

12. a. A partnership that is not a qualified investment partnership or an investment club and that is not listed on a United States national stock exchange shall, on or before the 15th day of the fourth month succeeding the close of each privilege period, remit a payment of tax. The amount of tax shall be equal to the sum of: all of the share of the entire net income of the partnership for that privilege period of all nonresident noncorporate partners, multiplied by an allocation factor determined, pursuant to section 6 of P.L.1945, c.162 (C.54:10A-6), based on the allocation fractions of the partnership for that privilege period, and multiplied by .0637 plus all of the share of the entire net income of the partnership for that privilege period of all nonresident corporate partners, multiplied by an allocation factor determined, pursuant to section 6 of P.L.1945, c.162 (C.54:10A-6), based on the allocation fractions of the partnership for that privilege period, and multiplied by .09.

b. An amount of tax paid by a partnership pursuant to subsection a. of this section shall be credited to accounts of its nonresident partners in proportion to each nonresident partner's share of allocated entire net income and the multiplier rate for that partner class under subsection a. of this section as of the date of its receipt by the director, and each amount of tax so credited shall be deemed to have been paid by the respective partner in respect of the privilege period or taxable year of the partner.

c. For the purposes of this section:

"Investment club" means an entity: that is classified as a partnership for federal income tax purposes; all of the owners of which are individuals; all of the assets of which are securities, cash, or cash equivalents; the market value of the total assets of which do not exceed, as measured on the last day of its privilege period, an amount equal to the lesser of \$250,000 or \$35,000 per owner of the entity; and which is not required to register itself or its membership interests with the federal Securities and Exchange Commission; provided that beginning with privilege periods commencing on or after January 1, 2003 the director shall prescribe the total asset value amounts which shall apply by increasing the \$250,000 total asset amount and the per owner \$35,000 amount hereinabove by an inflation adjustment factor, which amounts shall be rounded to the next highest multiple of \$100. The inflation adjustment factor shall be equal to the factor calculated by dividing the consumer price index for urban wage earners and clerical workers for the nation, as prepared by the United States Department of Labor for September of the calendar year prior to the calendar year in which the privilege period begins, by that index for September of 2001;

"Nonresident noncorporate partner" means, an individual, an estate or a trust subject to taxation pursuant to the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., that is not a resident taxpayer or a resident estate or trust under that act;

"Nonresident corporate partner" means a partner that is not an individual, an estate or a trust subject to taxation pursuant to the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., that is not a corporation exempt from tax pursuant to section 3 of P.L.1945, c.162 (C.54:10A-3), and that does not maintain a regular place of business in this State other than a statutory office; and

"Partner" means an owner of an interest in the partnership, in whatever manner that owner and ownership interest are designated.

2. N.J.S.54A:8-6 is amended to read as follows:

Requirements concerning returns, notices, records and statements.

54A:8-6. Requirements concerning returns, notices, records and statements. (a) General. The director may prescribe regulations as to the keeping of records, the content and form of returns and statements, and the filing of copies of federal income tax returns and determinations. The director may require any person, by regulation or notice served upon such person, to make

such returns, render such statements, or keep such records, as the director may deem sufficient to show whether or not such person is liable under this act for tax or for collection of tax.

(b) Partnerships. (1) Each entity classified as a partnership for federal income tax purposes, including but not limited to a partnership, a limited liability partnership, or a limited liability company, having a resident owner of an interest in the entity or having any income derived from New Jersey sources, shall make a return for the taxable year setting forth all items of income, gain, loss and deduction and such other pertinent information as the director may by regulations and instructions prescribe. The director shall prescribe a State return form that, at a minimum, includes the name and address of each partner, member, or other owner of an interest in the entity however designated, of the entity for taxable years ending on or after December 31, 1994. Such return shall be filed on or before the fifteenth day of the fourth month following the close of each taxable year.

(2) (A) Each entity classified as a partnership for federal income tax purposes, other than an investment club, having any income derived from New Jersey sources, including but not limited to a partnership, a limited liability partnership, or a limited liability company, that has more than two owners shall at the prescribed time for making the return required under this subsection make a payment of a filing fee of \$150 for each owner of an interest in the entity, up to a maximum of \$250,000. For the purposes of this paragraph, "investment club" means an entity: that is classified as a partnership for federal income tax purposes; all of the owners of which are individuals; all of the assets of which are securities, cash, or cash equivalents; the market value of the total assets of which do not exceed, as measured on the last day of its taxable year, an amount equal to the lesser of \$250,000 or \$35,000 per owner of the entity; and which is not required to register itself or its membership interests with the federal Securities and Exchange Commission; provided that beginning with taxable years commencing on or after January 1, 2003 the director shall prescribe the total asset value amounts which shall apply by increasing the \$250,000 total asset amount and the per owner \$35,000 amount hereinabove by an inflation adjustment factor, which amounts shall be rounded to the next highest multiple of \$100. The inflation adjustment factor shall be equal to the factor calculated by dividing the consumer price index for urban wage earners and clerical workers for the nation, as prepared by the United States Department of Labor for September of the calendar year prior to the calendar year in which the taxable year begins, by that index for September of 2001;

(B) Each entity required to make a payment pursuant to subparagraph (A) of this paragraph shall also make, at the same time as making its payment pursuant to subparagraph (A) of this paragraph, an installment payment of its filing fee for the succeeding return period in an amount equal to 50% of the amount required to be paid pursuant to subparagraph (A). The amount of the installment payment shall be credited against the amount of the filing fee due for the succeeding return period, or, if the amount of the installment payment exceeds the amount of the filing fee due for the succeeding return period, successive return periods.

(C) Notwithstanding the provisions of R.S.54:48-2 and R.S.54:48-4 to the contrary, the fee required pursuant to subparagraph (A) of this paragraph and the installment payment required pursuant to subparagraph (B) of this paragraph shall, for purposes of administration, be payments to which the provisions of the State Uniform Tax Procedure Law, R.S.54:28-1 et seq., shall be applicable and the collection thereof may be enforced by the director in the manner therein provided.

(3) Each entity required to file a return under this subsection for any taxable year shall, on or before the day on which the return for the taxable year is required to be filed, furnish to each person who is a partner or other owner of an interest in the entity however designated, or who holds an interest in such entity as a nominee for another person at any time during that taxable year a copy of such information required to be shown on such return as the director may prescribe.

(4) For the purposes of this subsection, "taxable year" means a year or period which would be a taxable year of the partnership if it were subject to tax under this act.

(c) Information at source. The director may prescribe regulations and instructions requiring returns of information to be made and filed on or before February 15 of each year as to the payment or crediting in any calendar year of amounts of \$100.00 or more to any taxpayer under this act. Such returns may be required of any person, including lessees or mortgagors of real or

personal property, fiduciaries, employers, and all officers and employees of this State, or of any municipal corporation or political subdivision of this State, having the control, receipt, custody, disposal or payment of interest, rents, salaries, wages, premiums, annuities, compensations, remunerations, emoluments or other fixed or determinable gains, profits or income, except interest coupons payable to bearer. A duplicate of the statement as to tax withheld on wages, required to be furnished by an employer to an employee, shall constitute the return of information required to be made under this section with respect to such wages.

(d) Notice of qualification as receiver, et cetera. Every receiver, trustee in bankruptcy, assignee for benefit of creditors, or other like fiduciary shall give notice of his qualification as such to the director, as may be required by regulation.

3. This act shall take effect immediately and apply to taxable years and privilege periods beginning on or after January 1, 2002.

Approved January 14, 2004.