NOT FOR PUBLICATION WITHOUT THE APPROVAL OF THE TAX COURT COMMITTEE ON OPINIONS

ANTHONY Y. KITE, Plaintiff, v. DIRECTOR, DIVISION OF TAXATION, Defendant.	)	TAX COURT OF NEW JERSEY DOCKET NO. 000190-2013 Approved for Publication In the New Jersey Tax Court Reports

Decided: February 22, 2016

Steven D. Janel for plaintiff (Law Offices of Steven D. Janel, attorneys).

Ramanjit K. Chawla for defendant (John J. Hoffman, Acting Attorney General of New Jersey, attorney; Carl A. Wohlleben, on the briefs).

DeALMEIDA, P.J.T.C.

This opinion addresses whether a monetary recovery to a relator in an action filed under the False Claims Act, 31 U.S.C.A. §3729, et seq. ("FCA"), is an "award" subject to New Jersey gross income tax pursuant to N.J.S.A. 54A:5-1(l). In addition, the court considers whether, if the recovery is subject to New Jersey gross income tax, the taxable amount of income is determined after deduction of attorney's fees incurred in securing the recovery, as well as amounts paid pursuant to contract to other relators who brought similar claims under the federal statute.

For the reasons stated more fully below, the court concludes that the Director, Division of Taxation correctly determined that a recovery by a relator under the FCA is subject to New Jersey gross income tax as an "award" pursuant to N.J.S.A. 54A:5-1(l), and that the entire amount of the

*

recovery, before deduction of attorney's fees and contractual payments to other relators, is subject to tax. As a result of these conclusions, the Director's Final Determination assessing New Jersey gross income tax, penalties, and interest against plaintiff is affirmed.

I. Findings of Fact and Procedural History

This opinion sets forth the court's findings of fact and conclusions of law based on the parties' submissions in support of their cross-motions for summary judgment. R. 1:7-4.

Plaintiff Anthony Y. Kite is a Princeton resident who is employed as a healthcare consultant, advising hospital boards and senior management on various strategic and financial matters. While performing consulting services in 2004, plaintiff discovered a pattern of unlawful Medicare billing by several hospitals. According to plaintiff, these fraudulent practices, which he describes as "turbo-charging," resulted in overcharges to the federal government in amounts as much as 400% higher than necessary for common medical procedures. Over the next several months, plaintiff undertook an extensive review and analysis of more than one million pages of documents and computerized data concerning Medicare cost reports, charts, and billing information pertaining to twenty-one hospitals during a four-year period.

Having concluded that he uncovered sufficient evidence to corroborate fraudulent activity, plaintiff retained counsel to file and prosecute an action on behalf of the United States, with plaintiff as the relator, under the FCA. Plaintiff's counsel thereafter filed a Complaint in the United States District Court for the District of New Jersey.

The FCA allows the federal government to recover damages and penalties against persons who knowingly submit false or fraudulent claims to the government for payment or approval. 31 U.S.C.A. §3729. In addition, the statute authorizes a private citizen to commence and prosecute a civil action in the name of the United States, known as a qui tam action. 31 U.S.C.A. §3730(b)(1).

"'The purpose of the qui tam provisions of the [FCA] is to encourage private individuals who are aware of fraud being perpetrated against the Government to bring such information forward.'" United States ex rel. Dick v. Long Island Lighting Co., 912 F.2d 13, 18 (2d Cir. 1990)(quoting H.R. Rep. No. 660, 99th Cong., 2d Sess. 22 (1986)).

The private person bringing a qui tam action in the name of the United States, known as "the qui tam plaintiff" or "the relator," must file the Complaint in camera, and serve the federal government with a copy of the Complaint and "written disclosure of substantially all material evidence and information" the person possesses in support of the allegations of fraudulent claims. 31 U.S.C.A. §3730(b)(2). The federal government then has sixty days to decide whether to intervene and proceed with the action, in which case the action shall be prosecuted by the federal government. 31 U.S.C.A. §3730(b)(4)(A). If the federal government decides not to intervene in the action, the person who filed the Complaint has the right to proceed with the action in the name of the United States. 31 U.S.C.A. §3730(b)(4)(B). Where the government intervenes and takes control of the action, the relator remains a party to the action and is entitled to a portion of any recovery by the United States. 31 U.S.C.A. §3730(d)(1). The relator shall receive at least 15 percent but not more than 25 percent of the proceeds of the action or settlement of the claims, "depending upon the extent to which the person substantially contributed to the prosecution of the action." Ibid. The relator may also be entitled to recover legal fees and other expenses associated with the action. Ibid.

The United States Department of Justice ("DOJ") elected to intervene in plaintiff's action and prosecute the claims that he asserted on behalf of the United States. Subsequent to plaintiff's Complaint being unsealed, the DOJ revealed the existence of two Complaints filed by other relators setting forth allegations that overlapped with those alleged by plaintiff against some of the

same hospital defendants. To address this situation, plaintiff and three other relators who raised similar claims executed a Relators' Joint Prosecution and Sharing Agreement in late 2006. Pursuant to the agreement, the relators "have determined that it is in the best interest individually and collectively to work together to advance all three qui tam lawsuits to a successful resolution against the hospital defendants." To that end, the relators agreed to share "all monies that are awarded as relator's share awards as a result of claims" asserted in the three Complaints. The agreement acknowledges that the sharing of recovered amounts is "a matter of contractual agreement" among the relators.

According to the agreement,

> [u]pon receipt by any one law firm of any or all settlement proceeds from the United States, the proceeds shall be placed in a trust escrow account maintained by the recipient law firm for the benefit of its Relator or Relators pursuant to the Rules of Professional Conduct in the state in which the escrow account is located.

This is followed by notification of the counsel for the relator or relators who did not receive the proceeds, the submission of proposed distribution schedules, and, ultimately, allocation of the settlement proceeds to all relators. Importantly, the agreement notes that

> [t]here is nothing about this Agreement which impacts the clients or their counsel's obligation to pay federal, state and local taxes associated with the settlement.

In 2008, plaintiff signed three Settlement Agreements, each resolving claims raised against a single hospital in his qui tam Complaint. In each settlement agreement, plaintiff is named as the sole qui tam relator and in each settlement agreement a paragraph specifies the amount the United States "shall pay to [plaintiff], through his legal counsel" as his relator's share of the amount to be paid by the defendant hospital to the federal government. In addition, each settlement agreement specifies that

> [Plaintiff] represents that he has not assigned or transferred any of [his] Claims to any person, entity, or thing . . . .

As a result of the three Settlement Agreements, the United States recovered from the defendant hospitals $4.93 million. Plaintiff's share of the recovery, as allocated in the three settlement agreements, totaled $1,229,255, including interest.

According to the retainer agreement between plaintiff and his counsel, the firm representing plaintiff was entitled to a contingent fee percentage of any relator's share realized by plaintiff as the result of the settlement of the claims raised in his Complaint.

In 2008, the federal government tendered plaintiff's $1,229,255 relator's fee resulting from the three settlement agreements to plaintiff's law firm's trust account. The firm withdrew $368,776.50, as its contingency fee. In addition, the firm distributed $307,313.75 to the three other relators to satisfy plaintiff's contractual obligation to share his relator's fee with them. The law firm distributed the remaining $553,164.75 to plaintiff.

The Internal Revenue Service issued a 1009-Misc to plaintiff for 2008 showing income of $1,229,255 attributable to his recovery in the qui tam action he filed. Plaintiff's reported $1,229,255 in "other income" on his federal 2008 Form 1040 attributable to his recovery in the qui tam action. Plaintiff did not, however, report the $1,229,255 recovery on his New Jersey gross income tax return for 2008. He reported no income attributable to the settlement of the qui tam action. For federal income tax purposes, plaintiff was permitted to deduct from his taxable income the attorney's fees he paid to his counsel.

On January 5, 2012, a Division of Taxation auditor issued a Notice of Deficiency to plaintiff. The auditor revised plaintiff's 2008 taxable income for New Jersey gross income tax purposes to include the $1,229,255 recovery in the qui tam action as an "award" pursuant to N.J.S.A. 54A:5-1(l). The auditor did not allow for deductions of the attorney's fees plaintiff paid

his counsel, or the amounts he paid to the other relators pursuant to his contractual obligations. Finally, the auditor adjusted plaintiff's property tax deduction (in plaintiff's favor) and gambling winning (in favor of the State). As a result of the adjustments, plaintiff was assessed $118,882.52 in New Jersey gross income tax, penalties and interest.[1]

After an administrative conference, the Director, on November 9, 2012, issued a Final Determination affirming the conclusions of the auditor. With interest calculated to December 15, 2012, the assessment against plaintiff amounted to $124,476.

On February 5, 2013, plaintiff filed a Complaint in this court challenging the November 9, 2012 Final Determination. Plaintiff alleges that the qui tam recovery is not subject to New Jersey gross income tax and that if the recovery is subject to tax, he is entitled to a deduction for the attorney's fees he paid to his counsel and for the amounts he paid to other relators.[2]

After discovery, the parties cross-moved for summary judgment. The court heard oral argument from counsel on the cross motions.

II. Conclusions of Law

Summary judgment should be granted where "the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to a judgment

---

[1] The Director moved for summary judgment with respect to the inclusion of gambling winnings in plaintiff's 2008 taxable income. Plaintiff offered no opposition to the Director's motion on this point, effectively conceding the issue in favor of the Director.

[2] The Complaint contains an allegation that the assessment of tax against plaintiff is barred by the applicable statute of limitations. Plaintiff subsequently abandoned that claim. The Complaint also demands that penalties and interest be abated in the event that the assessment is upheld. Plaintiff offered no argument on this point in his moving papers, effectively waiving the abatement claim.

or order as a matter of law." R. 4:46-2. In Brill v. Guardian Life Ins. Co., 142 N.J. 520, 523 (1995), our Supreme Court established the standard for summary judgment as follows:

> [W]hen deciding a motion for summary judgment under Rule 4:46-2, the determination whether there exists a genuine issue with respect to a material fact challenged requires the motion judge to consider whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party in consideration of the applicable evidentiary standard, are sufficient to permit a rational factfinder to resolve the alleged disputed issue in favor of the non-moving party.

The court finds that there are sufficient undisputed material facts in the motion record to determine the validity of the Director's November 9, 2012 Final Determination.

The court's analysis has as its foundation the familiar principle that the Director's interpretation of tax statutes is entitled to a presumption of validity. "Courts have recognized the Director's expertise in the highly specialized and technical area of taxation." Aetna Burglar & Fire Alarm Co. v. Director, Div. of Taxation, 16 N.J. Tax 584, 589 (Tax 1997)(citing Metromedia, Inc. v. Director, Div. of Taxation, 97 N.J. 313, 327 (1984)). The scope of judicial review of the Director's decision with respect to the imposition of a tax "is limited." Quest Diagnostics, Inc. v. Director, Div. of Taxation, 387 N.J. Super. 104, 109 (App. Div.), certif. denied, 188 N.J. 577 (2006). The Supreme Court has directed courts to accord "great respect" to the Director's application of tax statutes, "so long as it is not plainly unreasonable." Metromedia, supra, 97 N.J. at 327. See also GE Solid State, Inc. v. Director, Div. of Taxation, 132 N.J. 298, 306 (1993)("Generally, courts accord substantial deference to the interpretation an agency gives to a statute that the agency is charged with enforcing."). However, judicial deference is not absolute. An agency's interpretation of the law that is plainly at odds with the statute will not be upheld. See Oberhand v. Director, Div. of Taxation, 193 N.J. 558, 568 (2008)(citing GE Solid State, supra, 132 N.J. at 306).

The Gross Income Tax Act provides that taxable income shall consist of sixteen distinct categories. N.J.S.A. 54A:5-1. The only category that arguably is applicable to plaintiff's qui tam recovery is N.J.S.A. 54A:5-1(l). The statute provides that

> New Jersey gross income shall consist of the following categories of income:
>
> (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.
>
> [N.J.S.A. 54A:5-1(l).]

Statutory construction begins with the statute's plain language. Merin v. Maglaki, 126 N.J. 430, 434 (1992). "A statute should be interpreted in accordance with its plain meaning if it is clear and unambiguous on its face and admits of only one interpretation." Board of Educ. v. Neptune Twp. Educ. Ass'n, 144 N.J. 16, 25 (1996)(quotations omitted). "[T]he best approach to the meaning of a tax statute is to give to the words used by the Legislature their generally accepted meaning, unless another or different meaning is expressly indicated." Public Serv. Elec. & Gas Co. v. Township of Woodbridge, 73 N.J. 474, 478 (1977)(quotations omitted). "'The duty of the Director, and this court, is to give meaning to the wording of the statute and, where the words used are unambiguous, apply its plain meaning in the absence of a legislative intent to the contrary.'" Vassilidze v. Director, Div. of Taxation, 24 N.J. Tax 278, 291 (Tax 2008)(quoting Sutkowski v. Director, Div. of Taxation, 312 N.J. Super. 465, 475 (App. Div. 1998)).

It is plain that "[a]mounts received as . . . awards" includes plaintiff's recovery from the settlement of the qui tam action he instituted on behalf of the federal government. It is commonly understood that the monetary recovery of a party to a lawsuit is an "award." This is the "generally accepted meaning" of the term "award" in the context of litigation. N.J.S.A. 1:1-1 (words in a statute should "be given their generally accepted meaning, according to the approved usage of the

language."); accord Urso & Brown, Inc. v. Director, Div. of Taxation, 19 N.J. Tax 246, 262 (Tax 2001), aff'd, 353 N.J. Super. 248 (App. Div. 2002). Indeed, the FCA defines the "[a]ward to qui tam plaintiff" as "at least 15 percent but not more than 25 percent of the proceeds of the action or settlement of the claim . . . ." 31 U.S.C.A. §3730(d)(emphasis added). This underscores the conclusion that the relator's fee recovered by plaintiff is an "award" as that term is commonly used and as it is meant to be applied in N.J.S.A. 54A:5-1(l).

Moreover, that the Legislature considers a monetary recovery from a lawsuit to be taxable income is unequivocally established by its enactment of N.J.S.A. 54A:6-6(b), which excludes from gross income tax the "amount of damages received, whether by suit or agreement, on account of personal injuries or sickness."[3] The fact that the Legislature provided that monetary awards related to personal injury and illness are excluded from taxable income unquestionably leads to the conclusion that other types of monetary awards are included in taxable income. If amounts recovered from a legal action were not taxable income as an "award" under N.J.S.A. 54A:5-1(l), there would be no need for N.J.S.A. 54A:6-6(b), excluding a particular category of such recoveries from taxable income. Any other reading of N.J.S.A. 54A:5-1(l) would render N.J.S.A. 54A:6-6(b) superfluous, a result disfavored by longstanding precedent. See Gabin v. Skyline Cabana Club, 54 N.J. 550, 555 (1969)("It is a cardinal rule of statutory construction that full effect should be given, if possible, to every word of a statute. We cannot assume that the Legislature used meaningless language.").[4]

---

[3] Plaintiff does not argue that his qui tam recovery falls within this exclusion.

[4] N.J.S.A. 54A:5-1(l) also notes the existence of statutory exclusions from taxable income of: (1) scholarships at educational institutions; (2) fellowship grants; (3) amounts received to cover expenses incident to a scholarship or research grant; and (4) New Jersey lottery winnings not exceeding $10,000. See N.J.S.A. 54A:6-8(a) through (c); N.J.S.A. 54A:6-11. There provisions of the statute are not at issue here.

Here, the millions of dollars recovered by the federal government as a result of the Complaint filed by plaintiff were an award of damages for alleged fraudulent billings related to healthcare. Plaintiff, as a consequence of his status as a qui tam relator, was entitled by law to a percentage of that award. He acted as the federal government's "assignee [with] standing to assert the injury in fact suffered by the assignor," and the FCA "can reasonably be regarded as effecting a partial assignment of the Government's damages claim." Vermont Agency of Natural Resources v. United States ex rel. Stevens, 529 U.S. 765, 773, 120 S. Ct. 1858, 1863, 146 L.Ed.2d 836, 846 (2000). As would be the case for any type of damages recovered by a party to litigation, apart from those excluded by N.J.S.A. 54A:6-6, the award to plaintiff as a result of the settlement of his qui tam action must be included in his taxable income in the year that the award is received.

The court is not persuaded by plaintiff's argument that "prizes" and "awards" under N.J.S.A. 54A:5-1(l) include only amounts won as the result of chance, skill, luck, merit or need. Plaintiff's argument is based on selected dictionary definitions of the terms "prizes" and "awards." There is, however, no warrant to resort to dictionary definitions when the meaning of N.J.S.A. 54A:5-1(l) is evident from its plain language. Intrinsic interpretative aids may be used to decipher the meaning of a statute only where the relevant statutory language is ambiguous or if a literal application of its terms will lead to an absurd result. Bosland v. Warnock Dodge, Inc., 197 N.J. 543, 553 (2009). There is no ambiguity in N.J.S.A. 54A:5-1(l) as it applies to plaintiff's recovery in his qui tam action; nor would including the amount received by plaintiff in his taxable income be an absurd result. Notably, the federal government considers the amount recovered by a qui tam relator to be taxable income for federal purposes. See e.g. Campbell v. Comm'r, 658 F.3d 1255 (11th Cir. 2011); Trantina v. United States, 512 F.3d 567, 570, n.2 (9th Cir. 2008); Brooks v. United States, 383 F.3d 521 (6th Cir. 2004); Roco v. Comm'r, 121 T.C. 160 (2003). While the federal

government's treatment of an item of income as taxable is not controlling for New Jersey gross income tax purposes, the fact that the federal government treats a qui tam relator's award as taxable underscores the conclusion the Director's interpretation of N.J.S.A. 54A:5-1(l) to apply to plaintiff's qui tam recovery is not an absurd reading of the statute.

In addition, to the extent that plaintiff's knowledge, research and understanding of hospital billing practices assisted in his uncovering, recognizing, and coherently expressing the fraudulent activities perpetrated against the federal government, plaintiff's skill contributed to his recovery in the qui tam action he initiated. Thus, even if the court were to look to the dictionary definitions upon which plaintiff relies, its conclusion would be the same: plaintiff was awarded a relator's fee based, at least in part, on his skill at identifying and prosecuting his claims and based on the merit of the allegations he raised in his Complaint. He was "awarded" a relator's fee both because he was statutorily entitled to a portion of the damages recovered by the federal government and as compensation for his significant contribution to uncovering fraudulent billing of the federal government. Indeed, plaintiff's motion brief emphasizes the extent of his efforts: he spent 2,500 hours reviewing over a million documents and computerize data to investigate and uncover proof of the fraudulent activity, a fact that, according to plaintiff, "significantly disrupted" "his life" for more than five years. Plaintiff concedes that his relator's fee could be viewed as "a bounty, a reward, payment on a unilateral contract or something different," but contends that it cannot reasonably be characterized as an award. This argument is not persuasive. At the very least, the Director's interpretation of N.J.S.A. 54A:5-1(l) is reasonable and cannot be said to contradict the plain language of the statute. The Director's view of the statute's meaning is, therefore, entitled to deference from this court.

The court also rejects plaintiff's contention that if the recovery in his qui tam action constitutes an "award" under N.J.S.A. 54A:5-1(l), then the taxable amount of the award is determined after deduction of the attorney's fees he paid his counsel, and the amounts he paid to the three other relators. Plaintiff's argument is based primarily on the contention that he "received" only $533,164.75 from the qui tam settlements because that is the amount distributed to him from his attorney's trust account after deduction of fees and payments to other relators. The undisputed facts belie plaintiff's argument.

It is undisputed that the United States transmitted $1,229,225 to the attorney trust account of plaintiff's counsel. This transfer of funds by the federal government fulfilled three settlement agreements requiring the federal government to "pay to [plaintiff], through his legal counsel" a total of $1,229,225 constituting plaintiff's recovery as a qui tam relator. Once that payment was made, the funds were held on plaintiff's behalf by his counsel, who had a fiduciary duty to distribute the funds in a manner that satisfied plaintiff's obligations and rights. See Cooper v. Bergton, 18 N.J. Super. 272, 277 (App. Div. 1952)(holding that a depository under an escrow agreement "becomes the agent of both parties as to such delivery."). See also New Cingular Wireless PCS, LLC v. Director, Div. of Taxation, 28 N.J. Tax 1 (Tax 2014)(holding that the Director's transmission of sales tax refunds to the trust account of customers' attorneys constituted transmission of the refunds to the customers). Plaintiff, therefore, "received" the entire $1,229,255 award when that amount was transferred by the federal government to the trust account of his attorney.

The court acknowledges that the amount transferred from the attorney trust account to plaintiff was only $533,164.75. This is so because plaintiff's counsel first satisfied two of plaintiff's contractual obligations to make payments from those funds to others. First, a

distribution from the attorney's account satisfied plaintiff's contractual obligation to pay the firm its contingency fee in the amount of $386,776.50. Second, a distribution from the law firm's trust account satisfied plaintiff's contractual obligation to pay the three other relators a share of plaintiff's qui tam award. There transfers were made after the full amount of plaintiff's recovery in the qui tam action was received by plaintiff. This is no different that would be the case if plaintiff instructed his counsel to pay plaintiff's mortgage, credit card debts, or student loans from the qui tam recovery prior to distributing the remainder of the award to plaintiff.

Nor is there any support for plaintiff's contention that "awards" under N.J.S.A. 54A:5-1(l) is net category of income. Of the sixteen categories of income subject to New Jersey gross income tax, the Legislature has expressly designated which are gross categories of income and which are net categories of income. For example, New Jersey gross income includes "[n]et profits from business," N.J.S.A. 54A:5-1(b), "[n]et gains or income from disposition of property," N.J.S.A. 54A:5-1(c), "[n]et gains or net income from or in the form of rents, royalties, patents, and copyrights," N.J.S.A. 54A:5-1(d), "[n]et gains or income derived through estates or trusts," N.J.S.A. 54A:5-1(h), and "[n]et pro rata share of S corporation income," N.J.S.A. 54A:5-1(p).

However, the remaining categories of income, identified in the same statute, are not designated as "net." For example, New Jersey gross income includes "[s]alaries, wages, tips, fees, commissions, bonuses, and other remuneration received for services rendered," N.J.S.A. 54A:5-1(a), "[i]nterest," N.J.S.A. 54A:5-1(e), "[d]ividends," N.J.S.A. 54A:5-1(f), "[g]ambling winnings," N.J.S.A. 54A:5-1g, "[i]ncome in respect of a decent," N.J.S.A. 54A:5-1(i), "[a]mounts distributed or withdrawn from an employee trust . . .," N.J.S.A. 54A:5-1(j), "[d]istributive share of partnership income," N.J.S.A. 54A:5-1(k), "[r]ental value of a residence furnished by an employer or a rental allowance paid by an employer . . . ," N.J.S.A. 54A:5-1(m), "[a]limony and

separate maintenance payments . . . ," N.J.S.A. 54A:5-1(n), "[i]ncome, gain or profit derived from acts or omissions defined as crimes or offenses . . . ," N.J.S.A. 54A:5-1(o), and "[a]mounts received as prizes and awards," N.J.S.A. 54A:5-1(l). These categories of income, including "awards" from litigation, are gross categories of income.

It was reasonable, therefore, for the Director to determine that plaintiff may not deduct the costs he incurred in securing his qui tam recovery – such as attorney's fees and his contractual obligation to pay other relators – from his taxable income under N.J.S.A. 54A:5-1(l). Like an employee who cannot deduct the expense of commuting to work from his taxable "salary" under N.J.S.A. 54A:5-1(a), or a taxpayer who cannot deduct the interest he paid on a personal loan to purchase stock in an S corporation which generated taxable income, Sidman v. Director, Div. of Taxation, 19 N.J. Tax 484 (App. Div. 2001), certif. denied, 170 N.J. 387 (2002), plaintiff cannot deduct the costs associated with the successful prosecution of his qui tam action.[5]

That the federal government permits a qui tam relator to deduct from taxable income attorney's fees related to a qui tam award is not controlling here. The American Job Creation Act of 2004, Pub. L. 108-357, sec. 703, 118 Stat. 1546, amended section 62(a) of the Internal Revenue Code to allow an adjustment from federal gross income for attorney's fees paid by, or on behalf of, a taxpayer in connection with a claim under the FCA, effective October 22, 2004. See Campbell v. Comm'r, 134 T.C. 20, 27 n.7 (2010), aff'd, 658 F.3d 1255 (11th Cir. 2011). It is well

[5] The court notes that N.J.S.A. 54A:5-2 provides that "[l]osses 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." (emphasis added). This statute does not assist plaintiff, as it permits "losses" from a distinct event(s) to offset gains from a separate event(s) within the same category of income in the same taxable year. For instance, a loss from the disposition of an item of property may be used to offset a gain from the disposition of other property in the same year. N.J.S.A. 54A:5-2 does not, however, authorize the deduction of expenses associated with generating income.

established, however, that the New Jersey Gross Income Tax Act is not modeled on the federal statute.

As the Supreme Court's explained in Smith v. Director, Div. of Taxation, 108 N.J. 19, 32 (1987):

> [e]ven a cursory comparison of the New Jersey Gross Income tax and the Internal Revenue Code indicate that they are fundamentally disparate statutes. The federal income tax model was rejected by the Legislature in favor of a gross income tax to avoid the loopholes available under the Code.

"New Jersey consciously refused to pattern its gross income tax on the federal code." King v. Director, Div. of Taxation, 22 N.J. Tax 627, 632 (App. Div. 2005)(citing Vinnik v. Director, Div. of Taxation, 12 N.J. Tax 450, 453 (Tax 1992)). Only those deductions expressly authorized by the New Jersey Legislature are permitted for gross income tax purposes, despite what may be allowed by federal authorities. Waksal v. Director, Div. of Taxation, 215 N.J. 224 (2013). "[T]o the extent that plaintiffs seek to establish a deduction from taxable gross income, they bear the burden of establishing a clear statutory basis therefore." Reck v. Director, Div. of Taxation, 345 N.J. Super. 443, 449 (App. Div. 2001), aff'd, 175 N.J. 54 (2002). The deductions plaintiff seeks are not provided in the New Jersey gross income tax statute.

Finally, the court is not persuaded by plaintiff's argument that public policy considerations demand that his qui tam recovery be insulated from taxation. It is not the province of the judiciary to determine public policy. The elected representatives in the other branches of government are charged with the responsibility of formulating the State's public policy, including management of the public fisc. The Legislature has elected to enact an income tax statute that quite plainly applies to "awards" of the type received by plaintiff as the result of his successful prosecution of claims against various hospitals engaged in fraudulent billing activities. Whether making such recoveries

exempt from New Jersey gross income tax would encourage citizens to uncover such abuses is a question for the elected branches of government to answer. The court notes that Congress, which enacted the FCA, did not exclude qui tam recoveries from federal income tax. In addition, the Legislature recently enacted the New Jersey False Claims Act, N.J.S.A. 2A:32C-1, et seq., which mirrors in many respects its federal counterpart, including authorizing private parties to bring suit in the name of the State based on fraudulent claims against New Jersey. Plaintiff points to no provision of that statute insulating recoveries under the State FCA from New Jersey gross income tax.

In light of the court's factual findings and legal conclusions, the Director's motion for summary judgment is granted. Plaintiff's cross-motion for summary judgment is denied. The court will enter Judgment affirming the November 9, 2012 Final Determination assessing gross income tax, penalties and interest against plaintiff.