



(Audio archived recordings of the committee meetings, corresponding to the date of the committee statement, **may possibly** be found at [www.njleg.state.nj.us](http://www.njleg.state.nj.us))

**FLOOR AMENDMENT STATEMENT:** Yes 12/19/2022  
06/20/2023  
06/28/2023

**LEGISLATIVE FISCAL ESTIMATE:** Yes 12/05/2022  
12/19/2022

**VETO MESSAGE:** No

**GOVERNOR'S PRESS RELEASE ON SIGNING:** No

**FOLLOWING WERE PRINTED:**

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**REPORTS:** No

**HEARINGS:** No

**NEWSPAPER ARTICLES:** Yes

Brent Johnson - For The Star-Ledger, 'N.J. makes move to grab tax dollars from N.Y. as Murphy signs law "We will not allow out-of-state politicians to take advantage of New Jerseyans," the bill's lead sponsor said.', *Star-Ledger, The*(online), 22 Jul 2023 003

Matthew Fazelpoor, 'New Jersey files federal lawsuit to block congestion pricing in NYC', *NJBIZ* (online), 21 Jul 2023

CL/JA

§§3,5  
C.54A:4-1.1  
and 54A:4-1.2  
§4  
C.34:1B-139.4  
§6  
Approp.  
§7  
Note to §2

P.L. 2023, CHAPTER 125, *approved July 21, 2023*  
Assembly, No. 4694 (*Third Reprint*)

1 AN ACT concerning taxes paid to other jurisdictions under the gross  
2 income tax, amending N.J.S.54A:4-1 <sup>1</sup>**[and]** <sup>1</sup> N.J.S.54A:5-8,  
3 <sup>1</sup>and N.J.S.54A:9-17,<sup>1</sup> supplementing Title 54A of the New  
4 Jersey Statutes and P.L.1974, c.80 (C.34:1B-1 et seq.), and  
5 making an appropriation.

6  
7 **BE IT ENACTED** by the Senate and General Assembly of the State  
8 of New Jersey:

9  
10 1. N.J.S.54A:4-1 is amended to read as follows:

11 54A:4-1. Resident credit for tax of another state. (a) A resident  
12 taxpayer shall be allowed a credit against the tax otherwise due  
13 under this act for the amount of any income tax or wage tax  
14 imposed for the taxable year by another state of the United States or  
15 political subdivision of such state, or by the District of Columbia,  
16 with respect to income which is also subject to tax under this act,  
17 except as provided by subsections (c) and (d) of this section.

18 (b) The credit provided under this section shall not exceed the  
19 proportion of the tax otherwise due under this act that the amount of  
20 the taxpayer's income subject to tax by the other jurisdiction bears  
21 to his entire New Jersey income.

22 (c) No credit shall be allowed against the tax otherwise due  
23 under this act for the amount of any income tax or wage tax  
24 imposed for the taxable year on S corporation income allocated to  
25 this State.

26 (d) No credit shall be allowed for the amount of any taxes paid  
27 or accrued for the taxable year on or measured by profits or income  
28 imposed on or paid on behalf of a person other than the taxpayer,  
29 whether or not the taxpayer may be held liable for the tax.

30 (e) Readjustment of the tax of another state or political  
31 subdivision thereof--if the taxpayer is allowed credit under this  
32 section for more or less of the tax of another state or political

**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:

<sup>1</sup>Assembly ACE committee amendments adopted May 18, 2023.

<sup>2</sup>Senate floor amendments adopted June 20, 2023.

<sup>3</sup>Senate floor amendments adopted June 26, 2023.

1 subdivision thereof than he is finally required to pay, the taxpayer  
2 shall send notice of the difference to the director who shall  
3 redetermine the tax for any years affected regardless of any  
4 otherwise applicable statute of limitations. A taxpayer may readjust  
5 the credit under this subsection when another state changes or  
6 corrects income reportable there either within the limitation period  
7 prescribed in N.J.S.54A:9-8 or within one year after the date the  
8 taxpayer received notification that the other state's income tax was  
9 due, whichever of such periods expires later. The division shall not  
10 allow a credit or refund unless the taxpayer files a claim within such  
11 period.

12 (f) A resident taxpayer shall be allowed a credit against the tax  
13 otherwise due under this act for the amount of any tax that the  
14 director determines is substantially similar to the tax imposed  
15 pursuant to section 3 of P.L.2019, c.320 (C.54A:12-3), for the  
16 taxable year, by another state of the United States or political  
17 subdivision of such state, or by the District of Columbia, with  
18 respect to the direct and indirect distributive proceeds from a pass-  
19 through entity, which distributive proceeds are also subject to tax  
20 under this act. A credit allowed pursuant to this subsection shall not  
21 exceed what would have been allowed if the income was taxed at  
22 the individual level and not taxed at the entity level.

23 For purposes of this subsection, "distributive proceeds" and  
24 "pass-through entity" mean the same as those terms are used in  
25 section 2 of P.L.2019, c.320 (C.54A:12-2).

26 (cf: P.L.2019, c.320, s.8)

27

28 2. N.J.S.54A:5-8 is amended to read as follows:

29 54A:5-8. a. Income from sources within this State for a  
30 nonresident individual, estate or trust means the income from the  
31 categories of gross income enumerated and classified under chapter  
32 5 of this act to the extent that it is earned, received or acquired from  
33 sources within this State:

34 (1) By reason of ownership or disposition of any interest in real  
35 or tangible personal property in this State; or

36 (2) In connection with a trade, profession, occupation carried on  
37 in this State or for the rendition of personal services performed in  
38 this State; or

39 (3) As a distributive share of the income of an unincorporated  
40 business, profession, enterprise, undertaking or other activity as the  
41 result of work done, services rendered or other business activities  
42 conducted in this State except as allocated to another state pursuant  
43 to regulations promulgated by the director under this act; or

44 (4) From intangible personal property employed in a trade,  
45 profession, occupation or business carried on in this State; or

46 (5) As a result of any lottery or wagering transaction in this  
47 State other than that excluded from taxation pursuant to  
48 N.J.S.54A:6-11; or

1 (6) As S corporation income allocated to this State of a New  
2 Jersey S corporation.

3 b. Income from sources within this State for a nonresident  
4 individual shall not include income from pensions and annuities as  
5 set forth in subsection j. of N.J.S.54A:5-1.

6 c. For purposes of paragraphs (2) through (4) of subsection a.  
7 of this section, a nonresident taxpayer shall not be deemed to be  
8 carrying on a trade, profession, occupation, business, enterprise,  
9 undertaking or other activity in this State, or to be rendering  
10 personal services in this State, solely as a result of the purchase,  
11 holding and sale of intangible personal property by the trade,  
12 profession, occupation, business, enterprise or undertaking, to the  
13 extent that (1) the activities related to the intangible personal  
14 property are for the account of the trade, profession, occupation,  
15 business, enterprise, or undertaking and (2) the trade, profession,  
16 occupation, business, enterprise, or undertaking does not hold the  
17 intangible personal property for sale to customers. For the purposes  
18 of this subsection: "intangible personal property" includes, but is  
19 not limited to, "commodities", as defined in paragraph (2) of  
20 subsection (e), and "securities," as defined in paragraph (2) of  
21 subsection (c), of section 475 of the federal Internal Revenue Code  
22 of 1986, 26 U.S.C. s.475; and "purchase, holding and sale of  
23 intangible personal property" includes activities incidental thereto  
24 giving rise to income, including commitment fees, breakup fees,  
25 income from securities lending, and any other incidental activities  
26 as prescribed or authorized by the director. The director shall adopt  
27 such regulations as the director deems necessary to accomplish the  
28 purposes of this section.

29 d. (1) The provisions of subsection c. of this section shall not  
30 apply to income from investment management services provided to  
31 a partnership, S corporation, or other entity.

32 (2) As used in this subsection:

33 "Investment management services" means providing a substantial  
34 quantity of any of the following services to a partnership, S  
35 corporation, or other entity as a partner thereto:

36 (a) advising as to the advisability of investing in, purchasing, or  
37 selling a specified asset;

38 (b) managing, acquiring, or disposing of a specified asset;

39 (c) arranging financing with respect to acquiring specified  
40 assets; or

41 (d) any activity in support of the services described in  
42 subparagraphs (a) through (c) of this paragraph.

43 A partner shall not be deemed to be providing investment  
44 management services under this section if the partnership interest is  
45 held directly or indirectly by a corporation, or any capital interest in  
46 the partnership, which provides the taxpayer with a right to share in  
47 partnership capital commensurate with the amount of capital  
48 contributed, determined at the time of receipt of such partnership

1 interest, or the value of partnership interest subject to tax under  
2 section 83 of the Internal Revenue Code (26 U.S.C. s.83), upon the  
3 receipt or vesting of such interest.

4 "Specified asset" means certain securities, real estate held for  
5 rental or investment, interests in partnerships, commodities, or  
6 options or derivatives contracts, except if at least 80 percent of the  
7 average fair market value of the specified assets of the partnership,  
8 S corporation, or other entity during the taxable year consists of real  
9 estate.

10 (3) This subsection shall remain inoperative until enactment into  
11 law by the states of Connecticut, New York, and Massachusetts of  
12 legislation having an identical effect with this subsection, sections 7  
13 and 9 of P.L.2018, c.45 (C.54A:5-16 and C.54:10A-6.4), and  
14 subsection (D) of section 6 of P.L.1945, c.162 (C.54:10A-6), as  
15 shall be determined by the Director of the Division of Taxation in  
16 the Department of the Treasury.

17 e. <sup>1</sup>["If an employee's state of residence uses a "convenience of  
18 the employer" test when determining the source of income of a  
19 nonresident, income or wages earned by a nonresident are allocated  
20 to the employer's location, unless the nonresident works from an  
21 out-of-state location due to the necessity of the employer, rather  
22 than the convenience of the employee.]" For an individual who is a  
23 nonresident of this State and who has income from employee  
24 compensation from a New Jersey employer for the performance of  
25 personal services performed outside of New Jersey <sup>2</sup>[" , but that  
26 location for the performance of the personal services is not  
27 necessitated by the employer]" that were not required by the  
28 employer to be performed outside of New Jersey <sup>2</sup> , and whose state  
29 of residence imposes an income or wage tax that requires employee  
30 compensation <sup>2</sup>to <sup>2</sup>be sourced to an employer's location if <sup>2</sup>[a] the  
31 nonresident <sup>2</sup>[of that state]" renders the personal services <sup>2</sup>[as an  
32 employee]" from an out-of-state location for the convenience of the  
33 nonresident <sup>2</sup> employee and not due to the necessity of the  
34 employer, <sup>3</sup>[that same sourcing rule shall apply to]" this State shall  
35 impose a similar New Jersey sourcing rule on <sup>3</sup> that income of <sup>2</sup>[a]  
36 the <sup>2</sup> nonresident <sup>2</sup>[of this State who is rendering personal services  
37 for an employer located in this State]" <sup>2</sup> . <sup>1</sup>

38 <sup>3</sup>f. Notwithstanding the provisions of the "Administrative  
39 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), to the  
40 contrary, the Director of the Division of Taxation in the Department  
41 of the Treasury may adopt, immediately upon filing with the Office  
42 of Administrative Law, regulations that the director deems  
43 necessary to implement the provisions of this section, which  
44 regulations shall be effective for a period not to exceed 180 from  
45 the date of filing. The director shall thereafter amend, adopt, or

1 readopt the regulations in accordance with the requirements of  
2 P.L.1968, c.410 (C.52:14B-1 et seq.).<sup>3</sup>  
3 (cf: P.L.2018, c.45, s.6)

4  
5 3. (New section) a. For taxable years beginning on and after  
6 January 1, 2020 but before January 1, 2024, a resident taxpayer  
7 who:

8 (1) pays any income tax or wage tax imposed for the taxable  
9 year by another state of the United States, or political subdivision of  
10 such state, or by the District of Columbia;

11 (2) applies for and is denied a refund from such state or  
12 jurisdiction for taxes paid to that state or jurisdiction on income  
13 derived from services rendered while the resident taxpayer was  
14 within New Jersey;

15 (3) files an appeal with a tax court or tribunal through which the  
16 resident taxpayer formally protests the denial by another state or  
17 jurisdiction of the refund requested by the resident taxpayer for  
18 taxes paid on income derived from services rendered while the  
19 resident taxpayer was within New Jersey; and

20 (4) obtains a final judgement from the tax court or tribunal  
21 resulting in the resident taxpayer being refunded taxes paid to  
22 another state or jurisdiction on income derived from services  
23 rendered while the resident taxpayer was within New Jersey shall be  
24 allowed a credit against the tax otherwise due for the taxable year  
25 under the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et  
26 seq., in amount equal to 50 percent of the amount of taxes that are  
27 <sup>1</sup>**[refunded by such tax court or tribunal and allocated to this State]**  
28 owed to the State of New Jersey as a result of the readjustment of  
29 the credit for tax of another state pursuant to subsection (e) of  
30 N.J.S.54A:4-1<sup>1</sup>.

31 b. If the amount of the credit allowed pursuant to subsection a.  
32 of this section exceeds the amount of tax otherwise due, that  
33 amount of excess shall be an overpayment for the purposes of  
34 N.J.S.54A:9-7; provided however, that subsection (f) of  
35 N.J.S.54A:9-7 shall not apply.

36  
37 <sup>2</sup>14. (New section) a. As used in this section:

38 "Authority" means the New Jersey Economic Development  
39 Authority established pursuant to P.L.1974, c.80 (C.34:1B-1 et seq.)

40 "Qualified taxpayer" means a taxpayer who is a New Jersey  
41 resident and whose employer has assigned that individual a work  
42 location outside of the State, who seeks from the employer and  
43 accepts a permanent reassignment of work location to a New Jersey  
44 location during the taxable year. A qualified taxpayer does not  
45 include an individual who received a credit pursuant to this section  
46 in a prior taxable year.

1        b. A qualified taxpayer shall be allowed a credit against the tax  
 2 otherwise due pursuant to the "New Jersey Gross Income Tax Act,"  
 3 N.J.S.54A:1-1 et seq., in the amount of \$2,000 for the taxable year.

4        c. The authority shall determine the taxpayer's eligibility for a  
 5 tax credit, and shall issue a certification awarding the tax credit to  
 6 the taxpayer. The value of tax credits approved by the authority  
 7 pursuant to this section shall not exceed a total of \$10,000,000 in  
 8 any fiscal year. Certifications awarding tax credits shall be  
 9 provided to applicants in the order in which the authority receives  
 10 the applications.

11        d. The Director of the Division of Taxation in the Department  
 12 of the Treasury shall prescribe the order of priority of the  
 13 application of the credit allowed under this section and any other  
 14 credits allowed by law against the tax otherwise due for the taxable  
 15 year under N.J.S.54A:1-1 et seq. The amount of the credit applied  
 16 under this section against the tax imposed under N.J.S.54A:1-1 et  
 17 seq. for the taxable year, together with any other credits allowed by  
 18 law, shall not reduce the tax liability to an amount less than zero.<sup>1</sup><sup>2</sup>

19  
 20        <sup>1</sup>[4.] <sup>2</sup>[5.] <sup>1</sup>4.<sup>2</sup> (New section) a. There is established a pilot  
 21 program, to be administered by the New Jersey Economic  
 22 Development Authority, through which the authority shall provide  
 23 grants to businesses to assign their employees, who are New Jersey  
 24 residents assigned to locations outside of the State, to New Jersey  
 25 locations. A business shall be eligible for a grant under the pilot  
 26 program if the business has 25 or more full time employees and is  
 27 <sup>1</sup>[legally domiciled] principally located<sup>1</sup> in another state.

28        b. A business seeking a grant pursuant to this section shall  
 29 submit an application for approval to the authority <sup>2</sup>on or before  
 30 July 1, 2028,<sup>2</sup> in the form and manner prescribed by the chief  
 31 executive officer of the authority. Following approval of an  
 32 application, but before the disbursement of grant funds, the  
 33 authority shall require the business to enter into a grant agreement.  
 34 The grant agreement shall, at a minimum, specify the amount of the  
 35 grant to be awarded to the business <sup>2</sup>[and] <sup>2</sup>, the minimum number  
 36 of resident employees the business shall assign to the State <sup>2</sup>, and, if  
 37 applicable, the terms governing actions proposed to be undertaken  
 38 by the business for the purpose of receiving the preference  
 39 authorized by subsection c. of this section<sup>2</sup> . If the authority  
 40 determines that the business made a material misrepresentation on  
 41 the business's grant application or if the business fails to comply  
 42 with any requirement set forth in the grant agreement, then the  
 43 business shall return to the authority any grant awarded pursuant to  
 44 this section.

45        c. The value of the grant shall be the <sup>2</sup>[net revenue realized by  
 46 the State through]<sup>2</sup> New Jersey Gross Income Tax <sup>2</sup>[paid by]

1 withholdings of<sup>2</sup> resident employees re-assigned by the business to  
 2 a New Jersey location <sup>1</sup>, as certified by the Director of the Division  
 3 of Taxation,<sup>1</sup> or <sup>2</sup>[\$100,000] \$500,000<sup>2</sup>, whichever is less. In  
 4 awarding the grants made available by this section, the authority  
 5 may establish a preference for businesses that <sup>2</sup>;<sup>2</sup> acquire or lease  
 6 office space in this State and make a capital investment in such  
 7 office space <sup>2</sup>; submit to the authority a plan showing that the  
 8 business will provide bonuses to, or otherwise increase the  
 9 compensation of, employees relocating to the State; or both<sup>2</sup>. The  
 10 sum of all grants awarded pursuant to this section shall not exceed  
 11 <sup>1</sup>[\$10,000,000] <sup>2</sup>[\$25,000,000] \$35,000,000<sup>2</sup> in any State fiscal  
 12 year.

13 As used in this subsection, "capital investment" means expenses  
 14 that the business incurs, or are incurred on behalf of the business by  
 15 its landlord, for construction, repair, renovation, improvement,  
 16 equipping, or furnishing of a building or structure acquired or  
 17 leased by the business and used in connection with the operation of  
 18 the business.

19

20 <sup>1</sup>[5.] <sup>2</sup>[6.1] 5.<sup>2</sup> Notwithstanding the provisions of the  
 21 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et  
 22 seq.), to the contrary, the Director of the Division of Taxation in the  
 23 Department of the Treasury may adopt, immediately upon filing  
 24 with the Office of Administrative Law, regulations that the director  
 25 deems necessary to implement the provisions of sections 1 through  
 26 <sup>1</sup>[3] <sup>2</sup>[4] <sup>3</sup> of <sup>1</sup>[this act] P.L. , c. (C. ) (pending before  
 27 the Legislature as this bill)<sup>1</sup>, which regulations shall be effective  
 28 for a period not to exceed 180 days from the date of the filing. The  
 29 director shall thereafter amend, adopt, or readopt the regulations in  
 30 accordance with the requirements of P.L.1968, c.410 (C.52:14B-1  
 31 et seq.).

32

33 <sup>1</sup>[6.] <sup>2</sup>[7.1] 6.<sup>2</sup> There is appropriated from the General Fund to  
 34 the New Jersey Economic Development Authority the sum of  
 35 <sup>1</sup>[\$10,000,000] <sup>2</sup>[\$25,000,000] \$35,000,000<sup>2</sup>, subject to the  
 36 approval of the Director of Budget and Accounting <sup>1</sup>in the Department  
 37 of the Treasury<sup>1</sup>, for the grants authorized pursuant to section <sup>1</sup>[4]  
 38 <sup>2</sup>[5] <sup>4</sup> of <sup>1</sup>[this act] P.L. , c. (C ) (pending before the  
 39 Legislature as this bill)<sup>1</sup>.

40

41 <sup>2</sup>[18.] 7.<sup>2</sup> N.J.S.54A:9-17 is amended to read as follows:

42 54A:9-17. (a) General. The director shall administer and  
 43 enforce the tax imposed by this act and is authorized to make such  
 44 rules and regulations, and to require such facts and information to  
 45 be reported as he may deem necessary to enforce the provisions of  
 46 this act. The director may divide the State into districts in each of

1 which a branch office may be maintained by him, but in no case  
2 shall a county be divided in forming a district.

3 (b) Delegation of powers. The director may delegate to any  
4 officer or employee of his division such of his powers as he may  
5 deem necessary to carry out efficiently the provisions of this act,  
6 and the person or persons to whom such power has been delegated  
7 shall possess and may exercise all of the power and perform all of  
8 the duties herein conferred and imposed upon the director.

9 (c) Examination of books and witnesses. The director for the  
10 purpose of ascertaining the correctness of any return, or for the  
11 purpose of making an estimate of taxable income of any person,  
12 shall have power to examine or to cause to have examined, by any  
13 agent or representative designated by him for that purpose, any  
14 books, papers, records or memoranda bearing upon the matters  
15 required to be included in the return, and may require the  
16 attendance of the person rendering the return or any officer or  
17 employee of such person, or the attendance of any other person  
18 having knowledge in the premises, and may take testimony and  
19 require proof material for his information, with power to administer  
20 oaths to such person or persons.

21 (d) Abatement authority. The director, on his own motion, may  
22 abate any small unpaid balance of an assessment of income tax, or  
23 any liability in respect thereof, if the director determines under  
24 uniform rules prescribed by him that the administration and  
25 collection costs involved would not warrant collection of the  
26 amount due. He may also abate, on his own motion, the unpaid  
27 portion of the assessment of any tax or any liability in respect  
28 thereof, which is excessive in amount, or is assessed after the  
29 expiration of the period of limitation properly applicable thereto, or  
30 is erroneously or illegally assessed. No claim for abatement under  
31 this subsection shall be filed by a taxpayer.

32 (e) The Department of the Treasury, Division of Taxation, may  
33 enter into an agreement with the taxing authorities of any state  
34 which imposes a tax on or is measured by income to provide that  
35 compensation paid in such state to residents of this State shall be  
36 exempt from such tax; in such case any compensation paid in this  
37 State to residents of such state shall be exempt from New Jersey  
38 personal income tax. The Division of Taxation, in such agreements,  
39 may provide for reciprocal withholding, employer liability,  
40 exchange of information and all other matters relating to  
41 cooperation between the states. The provisions of subsection (e) of  
42 N.J.S.54A:4-1 and subsection e. of N.J.S.54A:5-8 shall not affect  
43 any agreement entered into by the Division of Taxation and the  
44 taxing authorities of another state pursuant to this subsection.<sup>1</sup>  
45 (cf: N.J.S.54A:9-17)



# ASSEMBLY, No. 4694

## STATE OF NEW JERSEY 220th LEGISLATURE

INTRODUCED OCTOBER 3, 2022

**Sponsored by:**

**Assemblyman P. CHRISTOPHER TULLY**

**District 38 (Bergen and Passaic)**

**Assemblywoman LISA SWAIN**

**District 38 (Bergen and Passaic)**

**SYNOPSIS**

Concerns tax treatment of individual's income earned outside state of residence.

**CURRENT VERSION OF TEXT**

As introduced.



1 AN ACT concerning taxes paid to other jurisdictions under the gross  
2 income tax, amending N.J.S.54A:4-1 and N.J.S.54A:5-8,  
3 supplementing Title 54A of the New Jersey Statutes and P.L.1974,  
4 c.80 (C.34:1B-1 et seq.), and making an appropriation.

5  
6 **BE IT ENACTED** by the Senate and General Assembly of the State  
7 of New Jersey:

8  
9 1. N.J.S.54A:4-1 is amended to read as follows:

10 54A:4-1. Resident credit for tax of another state. (a) A resident  
11 taxpayer shall be allowed a credit against the tax otherwise due under  
12 this act for the amount of any income tax or wage tax imposed for the  
13 taxable year by another state of the United States or political  
14 subdivision of such state, or by the District of Columbia, with respect  
15 to income which is also subject to tax under this act, except as  
16 provided by subsections (c) and (d) of this section.

17 (b) The credit provided under this section shall not exceed the  
18 proportion of the tax otherwise due under this act that the amount of  
19 the taxpayer's income subject to tax by the other jurisdiction bears to  
20 his entire New Jersey income.

21 (c) No credit shall be allowed against the tax otherwise due under  
22 this act for the amount of any income tax or wage tax imposed for the  
23 taxable year on S corporation income allocated to this State.

24 (d) No credit shall be allowed for the amount of any taxes paid or  
25 accrued for the taxable year on or measured by profits or income  
26 imposed on or paid on behalf of a person other than the taxpayer,  
27 whether or not the taxpayer may be held liable for the tax.

28 (e) Readjustment of the tax of another state or political  
29 subdivision thereof--if the taxpayer is allowed credit under this  
30 section for more or less of the tax of another state or political  
31 subdivision thereof than he is finally required to pay, the taxpayer  
32 shall send notice of the difference to the director who shall  
33 redetermine the tax for any years affected regardless of any otherwise  
34 applicable statute of limitations. A taxpayer may readjust the credit  
35 under this subsection when another state changes or corrects income  
36 reportable there either within the limitation period prescribed in  
37 N.J.S.54A:9-8 or within one year after the date the taxpayer received  
38 notification that the other state's income tax was due, whichever of  
39 such periods expires later. The division shall not allow a credit or  
40 refund unless the taxpayer files a claim within such period.

41 (f) A resident taxpayer shall be allowed a credit against the tax  
42 otherwise due under this act for the amount of any tax that the  
43 director determines is substantially similar to the tax imposed  
44 pursuant to section 3 of P.L.2019, c.320 (C.54A:12-3), for the taxable  
45 year, by another state of the United States or political subdivision of

**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.**

1 such state, or by the District of Columbia, with respect to the direct  
2 and indirect distributive proceeds from a pass-through entity, which  
3 distributive proceeds are also subject to tax under this act. A credit  
4 allowed pursuant to this subsection shall not exceed what would have  
5 been allowed if the income was taxed at the individual level and not  
6 taxed at the entity level.

7 For purposes of this subsection, "distributive proceeds" and "pass-  
8 through entity" mean the same as those terms are used in section 2 of  
9 P.L.2019, c.320 (C.54A:12-2).  
10 (cf: P.L.2019, c.320, s.8)

11

12 2. N.J.S.54A:5-8 is amended to read as follows:

13 54A:5-8. a. Income from sources within this State for a  
14 nonresident individual, estate or trust means the income from the  
15 categories of gross income enumerated and classified under chapter  
16 5 of this act to the extent that it is earned, received or acquired from  
17 sources within this State:

18 (1) By reason of ownership or disposition of any interest in real  
19 or tangible personal property in this State; or

20 (2) In connection with a trade, profession, occupation carried on  
21 in this State or for the rendition of personal services performed in this  
22 State; or

23 (3) As a distributive share of the income of an unincorporated  
24 business, profession, enterprise, undertaking or other activity as the  
25 result of work done, services rendered or other business activities  
26 conducted in this State except as allocated to another state pursuant  
27 to regulations promulgated by the director under this act; or

28 (4) From intangible personal property employed in a trade,  
29 profession, occupation or business carried on in this State; or

30 (5) As a result of any lottery or wagering transaction in this State  
31 other than that excluded from taxation pursuant to N.J.S.54A:6-11;  
32 or

33 (6) As S corporation income allocated to this State of a New  
34 Jersey S corporation.

35 b. Income from sources within this State for a nonresident  
36 individual shall not include income from pensions and annuities as  
37 set forth in subsection j. of N.J.S.54A:5-1.

38 c. For purposes of paragraphs (2) through (4) of subsection a. of  
39 this section, a nonresident taxpayer shall not be deemed to be  
40 carrying on a trade, profession, occupation, business, enterprise,  
41 undertaking or other activity in this State, or to be rendering personal  
42 services in this State, solely as a result of the purchase, holding and  
43 sale of intangible personal property by the trade, profession,  
44 occupation, business, enterprise or undertaking, to the extent that (1)  
45 the activities related to the intangible personal property are for the  
46 account of the trade, profession, occupation, business, enterprise, or  
47 undertaking and (2) the trade, profession, occupation, business,  
48 enterprise, or undertaking does not hold the intangible personal

1 property for sale to customers. For the purposes of this subsection:  
2 "intangible personal property" includes, but is not limited to,  
3 "commodities", as defined in paragraph (2) of subsection (e), and  
4 "securities," as defined in paragraph (2) of subsection (c), of section  
5 475 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.475;  
6 and "purchase, holding and sale of intangible personal property"  
7 includes activities incidental thereto giving rise to income, including  
8 commitment fees, breakup fees, income from securities lending, and  
9 any other incidental activities as prescribed or authorized by the  
10 director. The director shall adopt such regulations as the director  
11 deems necessary to accomplish the purposes of this section.

12 d. (1) The provisions of subsection c. of this section shall not  
13 apply to income from investment management services provided to a  
14 partnership, S corporation, or other entity.

15 (2) As used in this subsection:

16 "Investment management services" means providing a substantial  
17 quantity of any of the following services to a partnership, S  
18 corporation, or other entity as a partner thereto:

19 (a) advising as to the advisability of investing in, purchasing, or  
20 selling a specified asset;

21 (b) managing, acquiring, or disposing of a specified asset;

22 (c) arranging financing with respect to acquiring specified assets;

23 or

24 (d) any activity in support of the services described in  
25 subparagraphs (a) through (c) of this paragraph.

26 A partner shall not be deemed to be providing investment  
27 management services under this section if the partnership interest is  
28 held directly or indirectly by a corporation, or any capital interest in  
29 the partnership, which provides the taxpayer with a right to share in  
30 partnership capital commensurate with the amount of capital  
31 contributed, determined at the time of receipt of such partnership  
32 interest, or the value of partnership interest subject to tax under  
33 section 83 of the Internal Revenue Code (26 U.S.C. s.83), upon the  
34 receipt or vesting of such interest.

35 "Specified asset" means certain securities, real estate held for  
36 rental or investment, interests in partnerships, commodities, or  
37 options or derivatives contracts, except if at least 80 percent of the  
38 average fair market value of the specified assets of the partnership, S  
39 corporation, or other entity during the taxable year consists of real  
40 estate.

41 (3) This subsection shall remain inoperative until enactment into  
42 law by the states of Connecticut, New York, and Massachusetts of  
43 legislation having an identical effect with this subsection, sections 7  
44 and 9 of P.L.2018, c.45 (C.54A:5-16 and C.54:10A-6.4), and  
45 subsection (D) of section 6 of P.L.1945, c.162 (C.54:10A-6), as shall  
46 be determined by the Director of the Division of Taxation in the  
47 Department of the Treasury.

1       e. If an employee's state of residence uses a "convenience of the  
2 employer" test when determining the source of income of a  
3 nonresident, income or wages earned by a nonresident are allocated  
4 to the employer's location, unless the nonresident works from an out-  
5 of-state location due to the necessity of the employer, rather than the  
6 convenience of the employee.

7 (cf: P.L.2018, c.45, s.6)

8  
9       3. (New section) a. For taxable years beginning on and after  
10 January 1, 2020 but before January 1, 2024, a resident taxpayer who:  
11 (1) pays any income tax or wage tax imposed for the taxable year by  
12 another state of the United States, or political subdivision of such  
13 state, or by the District of Columbia; (2) applies for and is denied a  
14 refund from such state or jurisdiction for taxes paid to that state or  
15 jurisdiction on income derived from services rendered while the  
16 resident taxpayer was within New Jersey; (3) files an appeal with a  
17 tax court or tribunal through which the resident taxpayer formally  
18 protests the denial by another state or jurisdiction of the refund  
19 requested by the resident taxpayer for taxes paid on income derived  
20 from services rendered while the resident taxpayer was within New  
21 Jersey; and (4) obtains a final judgement from the tax court or  
22 tribunal resulting in the resident taxpayer being refunded taxes paid  
23 to another state or jurisdiction on income derived from services  
24 rendered while the resident taxpayer was within New Jersey shall be  
25 allowed a credit against the tax otherwise due for the taxable year  
26 under the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et  
27 seq., in amount equal to 50 percent of the amount of taxes that are  
28 refunded by such tax court or tribunal and allocated to this State.

29       b. If the amount of the credit allowed pursuant to subsection a. of  
30 this section exceeds the amount of tax otherwise due, that amount of  
31 excess shall be an overpayment for the purposes of N.J.S.54A:9-7;  
32 provided, however, that subsection (f) of N.J.S.54A:9-7 shall not  
33 apply.

34  
35       4. (New section) a. There is established a pilot program, to be  
36 administered by the New Jersey Economic Development Authority,  
37 through which the authority shall provide grants to businesses to  
38 assign their employees, who are New Jersey residents assigned to  
39 locations outside of the State, to New Jersey locations. A business  
40 shall be eligible for a grant under the pilot program if the business  
41 has 25 or more full time employees and is legally domiciled in  
42 another state.

43       b. A business seeking a grant pursuant to this section shall submit  
44 an application for approval to the authority in the form and manner  
45 prescribed by the chief executive officer of the authority. Following  
46 approval of an application, but before the disbursement of grant  
47 funds, the authority shall require the business to enter into a grant  
48 agreement. The grant agreement shall, at a minimum, specify the

1 amount of the grant to be awarded to the business and the minimum  
2 number of resident employees the business shall assign to the State.  
3 If the authority determines that the business made a material  
4 misrepresentation on the business's grant application or if the  
5 business fails to comply with any requirement set forth in the grant  
6 agreement, then the business shall return to the authority any grant  
7 awarded pursuant to this section.

8 c. The value of the grant shall be the net revenue realized by the  
9 State through New Jersey Gross Income Tax paid by resident  
10 employees re-assigned by the business to a New Jersey location or  
11 \$100,000, whichever is less. In awarding the grants made available  
12 by this section, the authority may establish a preference for  
13 businesses that acquire or lease office space in this State and make a  
14 capital investment in such office space. The sum of all grants  
15 awarded pursuant to this section shall not exceed \$10,000,000 in any  
16 State fiscal year.

17 As used in this subsection, "capital investment" means expenses  
18 that the business incurs, or are incurred on behalf of the business by  
19 its landlord, for construction, repair, renovation, improvement,  
20 equipping, or furnishing of a building or structure acquired or leased  
21 by the business and used in connection with the operation of the  
22 business.

23

24 5. Notwithstanding the provisions of the "Administrative  
25 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), to the  
26 contrary, the Director of the Division of Taxation in the Department  
27 of the Treasury may adopt, immediately upon filing with the Office  
28 of Administrative Law, regulations that the director deems necessary  
29 to implement the provisions of sections 1 through 3 of this act, which  
30 regulations shall be effective for a period not to exceed 180 days from  
31 the date of the filing. The director shall thereafter amend, adopt, or  
32 readopt the regulations in accordance with the requirements of  
33 P.L.1968, c.410 (C.52:14B-1 et seq.).

34

35 6. There is appropriated from the General Fund to the New Jersey  
36 Economic Development Authority the sum of \$10,000,000, subject  
37 to the approval of the Director of Budget and Accounting, for the  
38 grants authorized pursuant to section 4 of this act.

39

40 7. This act shall take effect immediately, except that section 2  
41 shall first apply to taxable years beginning on or after January 1,  
42 2023.

43

44

45

STATEMENT

46

47 The bill creates a "convenience of the employer" test for residents  
48 of states that impose a similar test. This means that if an employee's

1 state of residence uses a convenience of the employer test when  
2 determining the source of income of nonresidents, and the employee  
3 works for a New Jersey employer from a location in their state of  
4 residence for their own convenience, then the New Jersey employer  
5 must include those days as days worked in New Jersey and withhold  
6 accordingly.

7 The bill also establishes a tax credit available to resident taxpayers  
8 who: (1) pay any income tax or wage tax imposed for the taxable year  
9 by another state of the United States, or political subdivision of such  
10 state, or by the District of Columbia; (2) apply for and are denied a  
11 refund from such state or jurisdiction for taxes paid to that state or  
12 jurisdiction on income derived from services rendered while the  
13 resident taxpayer was within New Jersey; (3) file an appeal with a  
14 tax court or tribunal through which the resident taxpayer formally  
15 protests the denial by another state or jurisdiction of the refund  
16 requested by the resident taxpayer for taxes paid on income derived  
17 from services rendered while the resident taxpayer was within New  
18 Jersey; and (4) obtain a final judgement from the tax court or tribunal  
19 resulting in the resident taxpayer being refunded taxes paid to another  
20 state or jurisdiction on income derived from services rendered while  
21 the resident taxpayer was within New Jersey. The amount of the tax  
22 credit would be equal to 50 percent of the amount of taxes that are  
23 refunded by such tax court or tribunal and allocated to this State.

24 Finally, the bill establishes a pilot program, to be administered by  
25 the New Jersey Economic Development Authority, through which the  
26 authority will provide grants to businesses to assign their New Jersey  
27 resident employees to New Jersey locations. A business is eligible  
28 for a grant under the pilot program if the business has 25 or more full  
29 time employees and is legally domiciled in another state. The bill  
30 appropriates \$10,000,000 for the purposes of the grant program.

ASSEMBLY COMMERCE AND ECONOMIC DEVELOPMENT  
COMMITTEE

STATEMENT TO  
**ASSEMBLY, No. 4694**

with committee amendments

**STATE OF NEW JERSEY**

DATED: MAY 18, 2023

The Assembly Commerce and Economic Development Committee reports favorably Assembly Bill No. 4694, with committee amendments.

This bill, as amended, would establish a rule for the taxation on the income of an employee who works for a New Jersey employer but who resides and works outside of New Jersey at the employee's convenience. The bill provides for certain reciprocal treatment for income taxation, so that if another state in which an employee resides imposes tax on the income of an employee who works out-of-state for an in-state employer due to the convenience of the employee, that same rule will apply to a person who works for a New Jersey employer but who resides and works outside of New Jersey at the employee's convenience. This means that if an employee's state of residence determines the source of income of nonresidents by a "convenience of the employer test," and the employee works for a New Jersey employer from a location in the employee's state of residence for the employee's own convenience, then the New Jersey employer would be required to include those days as days worked in New Jersey and withhold income tax accordingly.

The bill also provides a refundable gross income tax credit available to New Jersey resident taxpayers who obtain a final judgment from another state's or jurisdiction's tax court or tribunal in the resident taxpayers' favor resulting in the resident taxpayer being refunded taxes paid to that State or jurisdiction on the basis that the income was derived from services rendered while the resident taxpayer was within New Jersey. The credit would be equal to 50 percent of the amount of the taxes that are owed to New Jersey as a result of the readjustment of New Jersey's credit for taxes paid to another State.

The bill also establishes a nonrefundable gross income tax credit of \$2,000 for individuals who seek from their employer and accept a reassignment from an out-of-State location to an in-State location. The bill caps the amount of tax credits that may be awarded to qualified taxpayers at \$10 million per State fiscal year.

Additionally, the bill establishes a pilot program, to be administered by the Economic Development Authority, through which the authority will provide grants to businesses to assign their New Jersey resident employees to New Jersey locations. A business is eligible for a grant if the business has 25 or more full-time employees and is principally located in another State. The bill caps the sum of all grants awarded in any fiscal year at \$25 million and makes an initial one-time appropriation from the General Fund for the grant program.

Finally, the bill clarifies that its provisions would not affect any agreements entered into by the Division of Taxation with another state concerning the payment of income taxes by residents and out-of-state workers. Under State law, the Division of Taxation is permitted to enter into agreements with the taxing authorities of another state to exempt New Jersey residents from the payment of income taxes to that state.

**PROPOSED COMMITTEE AMENDMENTS:**

The committee amended the bill to:

- replace the bill's language concerning the use of the "convenience of the employer" test with language clarifying that if the state in which an employee resides imposes tax on the income of an employee who works out-of-state for an in-state employer due to the convenience of the employee, that same rule will apply to a person who works for a New Jersey employer but who resides and works outside of New Jersey at the employee's convenience;
- clarify that the provisions of the bill would not affect any agreements entered into by the Division of Taxation with another state concerning the payment of income taxes by residents and out-of-state workers;
- revise the amount of the refundable credit allowed under the bill to 50 percent of the amount of taxes that are owed to the State of New Jersey as a result of the readjustment of the credit for tax of another state pursuant to subsection (e) of N.J.S.54A:4-1;
- establish a nonrefundable credit in the amount of \$2,000 for "qualified taxpayers";
- define "qualified taxpayer" as a taxpayer who is a New Jersey resident and whose employer has assigned that individual a work location outside of the State, who seeks from the employer and accepts a permanent reassignment of work location to a New Jersey location during the taxable year;
- provide that a "qualified taxpayer" does not include an individual who received a nonrefundable credit pursuant to the bill in a prior taxable year;
- cap the value of nonrefundable tax credits approved by the authority pursuant to the bill at \$10 million in any fiscal year;

- revise the “legally domiciled” requirement under the pilot program established by the bill to provide that, to be eligible for a grant under the pilot program, a business is required to have 25 or more employees and be principally located in another state;
- provide that the value of the grant under the pilot program established by the bill will be the net revenue realized by the State through New Jersey Gross Income Tax paid by resident employees re-assigned by the business to a New Jersey location, as certified by the Director of the Division of Taxation, or \$100,000, whichever is less;
- increase the cap on the sum of all grants awarded under the pilot program to \$25 million per State fiscal year;
- increase the amount appropriated from the General Fund to the New Jersey Economic Development Authority to \$25 million;
- clarify that the appropriation made under the bill is subject to the approval of the Director of Budget and Accounting in the Department of the Treasury; and
- revise certain internal citations.

# ASSEMBLY APPROPRIATIONS COMMITTEE

## STATEMENT TO

[First Reprint]

**ASSEMBLY, No. 4694**

# **STATE OF NEW JERSEY**

DATED: MAY 18, 2023

The Assembly Appropriations Committee reports favorably Assembly Bill No. 4694 (1R).

This bill would establish a rule for the taxation on the income of an employee who works for a New Jersey employer but who resides and works outside of New Jersey at the employee's convenience. The bill provides for certain reciprocal treatment for income taxation, so that if another state in which an employee resides imposes tax on the income of an employee who works out-of-state for an in-state employer due to the convenience of the employee, that same rule will apply to a person who works for a New Jersey employer but who resides and works outside of New Jersey at the employee's convenience. This means that if an employee's state of residence determines the source of income of nonresidents by a "convenience of the employer test," and the employee works for a New Jersey employer from a location in the employee's state of residence for the employee's own convenience, then the New Jersey employer would be required to include those days as days worked in New Jersey and withhold income tax accordingly.

The bill also provides a refundable gross income tax credit available to New Jersey resident taxpayers who obtain a final judgment from another state's or jurisdiction's tax court or tribunal in the resident taxpayers' favor resulting in the resident taxpayer being refunded taxes paid to that State or jurisdiction on the basis that the income was derived from services rendered while the resident taxpayer was within New Jersey. The credit would be equal to 50 percent of the amount of the taxes that are owed to New Jersey as a result of the readjustment of New Jersey's credit for taxes paid to another State.

The bill also establishes a nonrefundable gross income tax credit of \$2,000 for individuals who seek from their employer and accept a reassignment from an out-of-State location to an in-State location. The bill caps the amount of tax credits that may be awarded to qualified taxpayers at \$10 million per State fiscal year.

Additionally, the bill establishes a pilot program, to be administered by the Economic Development Authority, through which the authority will provide grants to businesses to assign their New Jersey resident employees to New Jersey locations. A business is eligible for a grant if the business has 25 or more full-time employees

and is principally located in another State. The bill caps the sum of all grants awarded in any fiscal year at \$25 million and makes an initial one-time appropriation from the General Fund for the grant program.

Finally, the bill clarifies that its provisions would not affect any agreements entered into by the Division of Taxation with another state concerning the payment of income taxes by residents and out-of-state workers. Under State law, the Division of Taxation is permitted to enter into agreements with the taxing authorities of another state to exempt New Jersey residents from the payment of income taxes to that state.

FISCAL IMPACT:

The Office of Legislative Services (OLS) concludes that the bill will have an indeterminate net impact on State finances, comprised of the following four components:

- 1) Annual State revenue increase to the extent that the adoption of a “convenience of the employer” rule allows the State to tax income earned by nonresident employees of New Jersey firms if they work at their home outside of New Jersey for their own convenience.
- 2) Annual State revenue decrease in fiscal years 2023 and 2024 from a new tax credit program for New Jersey resident taxpayers who file successful legal actions against other states that collect taxes paid on income derived from services rendered while the resident taxpayers were within New Jersey.
- 3) Annual State revenue decrease of up to \$10 million from a new tax credit program for individuals who seek from their employer and accept a reassignment from an out-of-State location to an in-State location.
- 4) Annual State expenditure increase of up to \$25 million for a new employee relocation grant program to be administered by the Economic Development Authority. The bill makes an initial one-time \$25 million appropriation from the General Fund for the grant program.

STATEMENT TO  
[First Reprint]  
**ASSEMBLY, No. 4694**

with Senate Floor Amendments  
(Proposed by Senator LAGANA)

ADOPTED: JUNE 20, 2023

These floor amendments modify the "convenience of the employer" test created by the bill to provide the following: for an individual who is a nonresident of this State and who has income from employee compensation from a New Jersey employer for the performance of personal services performed outside of New Jersey that were not required by the employer to be performed outside of New Jersey, and whose state of residence imposes an income or wage tax that requires employee compensation to be sourced to an employer's location if the nonresident renders the personal services from an out-of-state location for the convenience of the nonresident employee and not due to the necessity of the employer, that same sourcing rule will apply to that income of the nonresident.

The amendments also remove a section establishing a nonrefundable tax credit in the amount of \$2,000 for certain qualified taxpayers. The section defined a "qualified taxpayer" as a taxpayer who is a New Jersey resident and whose employer has assigned that individual a work location outside of the State, who seeks from the employer and accepts a permanent reassignment of work location to a New Jersey location during the taxable year. A qualified taxpayer did not include an individual who received a credit pursuant to this section in a prior taxable year. The section also required the New Jersey Economic Development Authority to determine the taxpayer's eligibility for a tax credit, and to issue a certification awarding the tax credit to the taxpayer. The section capped the total value of tax credits approved by the authority at \$10,000,000 in any fiscal year. The amendments remove these provisions from the bill entirely.

The amendments modify certain provisions concerning the pilot program created by the bill. The amendments require any business seeking a grant under the pilot program to submit an application for approval to the New Jersey Economic Development Authority (EDA) on or before July 1, 2028, in the form and manner prescribed by the chief executive officer of the EDA.

The amendments also modify certain requirements concerning grant agreements entered into under the pilot program. The amendments provide that in awarding the grants made available for the pilot program pursuant to the bill, the EDA may establish a preference for businesses that: acquire or lease office space in this State and make a capital investment in such office space; submit to the authority a plan showing that the business will provide bonuses to, or otherwise

increase the compensation of, employees relocating to the State; or both. The amendments require a grant agreement to specify the amount of the grant to be awarded to a business, the minimum number of resident employees the business is to assign to the State, and, if applicable, the terms governing actions proposed to be undertaken by the business for the purpose of receiving the preference.

The amendments modify the value of the grant to be awarded to a business under the pilot program, providing that the value of the grant is to be the New Jersey Gross Income Tax withholdings of resident employees re-assigned by the business to a New Jersey location, as certified by the Director of the Division of Taxation, or \$500,000, whichever is less. The amendments provide that the sum of all grants awarded under the pilot program is not to exceed \$35,000,000 in any State fiscal year, and the amendments appropriate this sum from the General Fund to the EDA.

STATEMENT TO  
[Second Reprint]  
**ASSEMBLY, No. 4694**

with Senate Floor Amendments  
(Proposed by Senator LAGANA)

ADOPTED: JUNE 26, 2023

These floor amendments modify the "convenience of the employer" test created by the bill to provide the following: for an individual who is a nonresident of this State and who has income from employee compensation from a New Jersey employer for the performance of personal services performed outside of New Jersey that were not required by the employer to be performed outside of New Jersey, and whose state of residence imposes an income or wage tax that requires employee compensation to be sourced to an employer's location if the nonresident renders the personal services from an out-of-state location for the convenience of the nonresident employee and not due to the necessity of the employer, this State will impose a similar New Jersey sourcing rule on that income of the nonresident. The amendments authorize the Director of the Division of Taxation in the Department of the Treasury to adopt, immediately upon filing with the Office of Administrative Law, regulations that the director deems necessary to implement this provision, which regulations will be effective for a period not to exceed 180 from the date of filing.

# LEGISLATIVE FISCAL ESTIMATE

[First Reprint]

## ASSEMBLY, No. 4694

### STATE OF NEW JERSEY 220th LEGISLATURE

DATED: JUNE 1, 2023

#### SUMMARY

|                           |   |
|---------------------------|---|
| <b>Synopsis:</b>          | Concerns tax treatment of individual's income earned outside of state of residence; appropriates \$25,000,000 |
| <b>Type of Impact:</b>    | Indeterminate net impact on State revenues.<br>Increase in State costs.                                       |
| <b>Agencies Affected:</b> | Department of the Treasury.<br>Economic Development Authority.  |

#### Office of Legislative Services Estimate

| <b>Fiscal Impact</b>        | <b><u>FY 2024 &amp; Annually Thereafter</u></b> |
|-----------------------------|---|
| <b>State Revenue Impact</b> | Indeterminate Net Impact                        |
| <b>State Cost Impact</b>    | Up to \$25,000,000                              |

- The Office of Legislative Services (OLS) concludes that the bill will have an indeterminate net impact on State finances, comprised of the following four components:
  - 1) Annual State revenue increase to the extent that the adoption of a “convenience of the employer” rule allows the State to tax income earned by nonresident employees of New Jersey firms if they work at their home outside of New Jersey for their own convenience.
  - 2) Annual State revenue decrease in fiscal years 2023 and 2024 from a new tax credit program for New Jersey resident taxpayers who file successful legal actions against other states that collect taxes paid on income derived from services rendered while the resident taxpayers were within New Jersey.
  - 3) Annual State revenue decrease of up to \$10 million from a new tax credit program for individuals who seek from their employer and accept a reassignment from an out-of-State location to an in-State location.
  - 4) Annual State expenditure increase of up to \$25 million for a new employee relocation grant program to be administered by the Economic Development Authority. The bill makes an initial one-time \$25 million appropriation from the General Fund for the grant program.

## **BILL DESCRIPTION**

The bill establishes a “convenience of the employer” test for residents of states that impose a similar test. This means that if any employee’s state of residence uses a convenience of the employer test when determining the source of income for nonresidents, and the employee works for a New Jersey employer from a location in the employee’s state of residence for the employee’s own convenience, then the New Jersey employer must include those days as days worked in New Jersey and withhold income tax accordingly.

The bill also provides a refundable gross income tax credit available to a New Jersey resident taxpayer who obtains a final judgment from another state’s or jurisdiction’s tax court or tribunal in the resident taxpayer’s favor resulting in the resident taxpayer being refunded taxes paid to that state or jurisdiction on the basis that the income was derived from services rendered while the resident taxpayer was within New Jersey. The credit would be equal to 50 percent of the amount of taxes that are owed to New Jersey as a result of the readjustment of New Jersey’s credit for taxes paid to another state.

The bill also establishes a nonrefundable gross income tax credit of \$2,000 for individuals who seek from their employer and accept a reassignment from an out-of-State location to an in-State location. The bill caps the amount of tax credits that may be awarded to qualified taxpayers at \$10 million per State fiscal year.

The bill establishes a pilot program, to be administered by the Economic Development Authority, through which the authority will provide grants to businesses to assign their New Jersey resident employees to New Jersey locations. A business is eligible for a grant if the business has 25 or more full-time employees and is principally located in another State. The bill caps the sum of all grants awarded in any fiscal year at \$25 million and makes an initial one-time appropriation from the General Fund for the grant program.

Finally, the bill clarifies that its provisions would not affect any agreements entered into by the Division of Taxation with another state concerning the payment of income taxes by residents and out-of-state workers. Under State law, the Division of Taxation is permitted to enter into agreements with the taxing authorities of another state to exempt New Jersey residents from the payment of income taxes to that state.

## **FISCAL ANALYSIS**

### ***EXECUTIVE BRANCH***

The OLS has not received a fiscal estimate from the Executive. The Department of the Treasury has provided information which enhances OLS understanding of the bill.

### ***OFFICE OF LEGISLATIVE SERVICES***

When considered in its entirety, the OLS concludes that the bill will have an indeterminate net impact on State finances, comprised of the following four components:

- 1) Annual State revenue increase to the extent that the adoption of a “convenience of the employer” rule allows the State to tax income earned by nonresident employees of New Jersey firms if they work at their home outside of New Jersey for their own convenience.

- 2) Annual State revenue decrease in fiscal years 2023 and 2024 from a new tax credit program for New Jersey resident taxpayers who file successful legal actions against other states that collect taxes paid on income derived from services rendered while the resident taxpayers were within New Jersey.
- 3) Annual State revenue decrease of up to \$10 million from a new tax credit program for individuals who seek from their employer and accept a reassignment from an out-of-State location to an in-State location.
- 4) Annual State expenditure increase of up to \$25 million for a new employee relocation grant program to be administered by the Economic Development Authority. The bill makes an initial one-time \$25 million appropriation from the General Fund for the grant program.

*Convenience of the Employer Test.* Under current law, nonresidents are taxed on all income sourced to New Jersey. For nonresidents earning income in New Jersey and another state, their New Jersey gross income tax liability is based on the percentage of their total income that comes from New Jersey. Income is sourced based on where the service or employment is performed. Compensation paid for work performed by nonresident employees who are physically present in New Jersey is subject to tax. The amount of tax due is calculated using a method of allocation which takes into account the number of days a nonresident works in New Jersey, the total number of days the nonresident worked in the entire year, and their total income for the entire year.

New Jersey currently does not have a convenience of the employer test. If nonresident employees are working for a New Jersey employer only remotely from their home state, the compensation paid to the employees would not be subject to the gross income tax because the work is not being performed in New Jersey. The enactment of a convenience of the employer test would allow New Jersey to tax income earned by nonresident taxpayers even though they are not physically present in New Jersey, thereby generating additional State gross income tax revenues. Information on the total amount of untaxed income earned by these employees (or nonresident taxpayers) and the amount of additional gross income tax revenue that may be generated by taxing that income is unknown.

*New Tax Credit for Resident Taxpayers.* The bill establishes a new tax credit to be awarded to New Jersey resident taxpayers who file successful legal actions against other states and jurisdictions that collect taxes paid on income derived from services rendered while the resident taxpayers were within New Jersey. The tax credit is equal to 50 percent of the amount of taxes paid to another state. The OLS cannot predict the magnitude of the State revenue loss because the amount of tax credits will be driven by the amount of income reallocated to New Jersey in accordance with a judgement issued by a tax court or tribunal in another state or jurisdiction. The State revenue loss will be temporally limited because the tax credit is effective from tax years 2020 through 2023 only.

Under current law, New Jersey taxpayers are allowed a credit against their gross income tax liability for taxes paid to other jurisdictions when their income is subject to tax by both New Jersey and the outside jurisdiction. The credit is equal to the greater of the tax paid to the other jurisdiction or a calculated amount representing the proportion of the taxpayer's income that is subject to tax in the other jurisdiction compared to income from all sources which is taxable to a New Jersey resident. According to the Department of the Treasury, if a taxpayer obtains a final judgment from a tax court or a tribunal and is refunded taxes paid to another state or jurisdiction, then the tax credit initially awarded to the taxpayer for taxes paid to another jurisdiction would be disallowed because the income sourced to another state (that served as the basis for the initial credit) would be sourced to New Jersey instead. This income would not be subject to taxation by the other state;

it would be subject to New Jersey gross income tax. The taxpayer would have to file an amended return to apply for the credit.

*New Relocation Tax Credit.* The bill also establishes a new gross income tax credit of \$2,000 for individuals who seek from their employer and accept a reassignment from an out-of-State location to an in-State location and caps the amount of tax credits that may be awarded to qualified taxpayers at \$10 million per State fiscal year. The OLS cannot predict the magnitude of the State revenue loss because the amount of tax credits will be driven by the number of qualified taxpayers who relocate to New Jersey each year.

*Employee Relocation Grant Program.* The bill establishes an annual \$25 million grant program to be administered by the Economic Development Authority, through which the authority will provide grants to businesses that assign employees, who are New Jersey residents assigned to locations outside of the State, to New Jersey locations. To be eligible for a grant, a business must have 25 or more full-time employees and be principally located in another State. The grant award would equal the net revenue realized by the State through New Jersey gross income taxes paid by resident employees who are reassigned by an eligible business to a New Jersey location, up to a maximum of \$100,000. Given that this is a new program, and that the OLS can neither predict how many eligible businesses will relocate employees to New Jersey nor the amount of gross income tax paid by those residents, the total amount of grants that will be awarded is unknown.

*Section:* Revenue, Finance, and Appropriations  
*Analyst:* Scott A. Brodsky  
Staff Fiscal & Budget Analyst  
*Approved:* Thomas Koenig  
Legislative Budget and Finance Officer

This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).

# LEGISLATIVE FISCAL ESTIMATE

[Second Reprint]

**ASSEMBLY, No. 4694**

## **STATE OF NEW JERSEY 220th LEGISLATURE**

DATED: JUNE 28, 2023

### SUMMARY

**Synopsis:** Concerns tax treatment of individual’s income earned outside State of residence; appropriates \$35 million.

**Type of Impact:** Indeterminate net impact on State revenues.  
Increase in State costs.

**Agencies Affected:** Department of the Treasury.  
Economic Development Authority.

#### Office of Legislative Services Estimate

| <b>Fiscal Impact</b>        | <b><u>FY 2024 &amp; Annually Thereafter</u></b> |
|-----------------------------|---|
| <b>State Revenue Impact</b> | Indeterminate Net Impact                        |
| <b>State Cost Increase</b>  | Up to \$35,000,000                              |

The Office of Legislative Services (OLS) concludes that the bill have an indeterminate impact on State finances, comprised of the following three components:

- 1) Annual State revenue increase to the extent that the adoption of a “convenience of the employer” rule allows the State to tax income earned by nonresident employees of New Jersey firms if they work at their home outside of New Jersey for their own convenience.
- 2) Annual State revenue decrease in fiscal years 2023 and 2024 from a new tax credit program for New Jersey resident taxpayers who file successful legal actions against other states that collect taxes paid on income derived from services rendered while the resident taxpayers were within New Jersey.
- 3) Annual State expenditure increase of up to \$35 million for a new employee relocation grant program to be administered by the Economic Development Authority. The OLS notes that the new grant program will be of limited duration as grant applications must be filed by July 1, 2028.

## **BILL DESCRIPTION**

The bill establishes a “convenience of the employer test” for residents of states that impose a similar test. This means that for an individual who is a nonresident of this State and who has income from employee compensation from a New Jersey employer for the performance of personal services performed outside of New Jersey that were not required to be performed outside of New Jersey, and whose state of residence imposes an income or wage tax that requires employee compensation to be sourced to an employer’s location if the nonresident renders the personal services from an out-of-state location for the convenience of the nonresident employee and not due to the necessity of the employer, that same sourcing rule will apply to that income of the nonresident.

The bill also provides a refundable gross income tax credit available to New Jersey resident taxpayers who obtain a final judgment from another state’s or jurisdiction’s tax court or tribunal in the resident taxpayer’s favor resulting in the resident taxpayer being refunded taxes paid to that state or jurisdiction on the basis that the income was derived from services rendered while the resident taxpayer was within New Jersey. The credit would be equal to 50 percent of the amount of taxes that are owed to New Jersey as a result of the readjustment of New Jersey’s credit for taxes paid to another State.

The bill establishes a pilot program, to be administered by the Economic Development Authority, through which the authority will provide grants to businesses to assign their New Jersey resident employees to New Jersey locations. A business is eligible for a grant if the business has 25 or more full-time employees and is principally located in another State. The bill caps the sum of all grants awarded in any fiscal year at \$35 million and makes an initial one-time appropriation from the General Fund for the grant program. The bill requires grant applications to be filed on or before July 1, 2028.

Finally, the bill clarifies that its provisions would not affect any agreements entered into by the Division of Taxation with another state concerning the payment of income taxes by residents and out-of-state workers. Under State law, the Division of Taxation is permitted to enter into agreements with the taxing authorities of another state to exempt New Jersey residents from the payment of income taxes to that state.

## **FISCAL ANALYSIS**

### ***EXECUTIVE BRANCH***

The OLS has not received a fiscal estimate from the Executive. The Department of the Treasury has provided information which enhances OLS understanding of the bill.

### ***OFFICE OF LEGISLATIVE SERVICES***

The OLS concludes that the bill have an indeterminate impact on State finances, comprised of the following three components:

- 1) Annual State revenue increase to the extent that the adoption of a “convenience of the employer” rule allows the State to tax income earned by nonresident employees of New Jersey firms if they work at their home outside of New Jersey for their own convenience.

2) Annual State revenue decrease in fiscal years 2023 and 2024 from a new tax credit program for New Jersey resident taxpayers who file successful legal actions against other states that collect taxes paid on income derived from services rendered while the resident taxpayers were within New Jersey.

3) Annual State expenditure increase of up to \$35 million for a new employee relocation grant program to be administered by the Economic Development Authority. The OLS notes that the new grant program will be of limited duration as grant applications must be filed by July 1, 2028.

*Convenience of the Employer Test.* Under current law, nonresidents are taxed on all income sourced to New Jersey. For nonresidents earning income in New Jersey and another state, their New Jersey gross income tax liability is based on the percentage of total income that comes from New Jersey. Income is sourced based on where the service or employment is performed. Compensation paid for work performed by nonresident employees who are physically present in New Jersey is subject to tax. The amount of tax due is calculated using a method of allocation which takes into account the number of days a nonresident works in New Jersey, the total number of days the nonresident worked in the entire year, and their total income for the entire year.

New Jersey currently does not have a convenience of the employer test. If nonresident employees are working for a New Jersey resident employer only remotely from their home state, the compensation paid to the employees would not be subject to the gross income tax because the work is not being performed in New Jersey. The enactment of a convenience of the employer test would allow New Jersey to tax income earned by nonresident taxpayers even though they are not physically present in New Jersey, thereby generating additional State gross income tax revenues. Information on the total amount of untaxed income earned by these employees (or nonresident taxpayers) and the amount of additional gross income tax revenue that may be generated by taxing that income is unknown.

*New Tax Credit for Resident Taxpayers.* The bill establishes a new tax credit to be awarded to New Jersey resident taxpayers who file successful legal actions against other states and jurisdictions that collect taxes paid on income derived from services rendered while the resident taxpayers were within New Jersey. The tax credit is equal to 50 percent of the amount of taxes paid to another state. The OLS cannot predict the magnitude of the State revenue loss because the amount of tax credits will be driven by the amount of income reallocated to New Jersey in accordance with a judgement issued by a tax court or tribunal in another jurisdiction. The State revenue loss will be temporally limited because the tax credit is effective from tax years 2020 through 2023 only.

Under current law, New Jersey taxpayers are allowed a credit against their gross income tax liability for taxes paid to other jurisdictions when their income is subject to tax by both New Jersey and the outside jurisdiction. The credit is equal to the greater of the tax paid to the other jurisdiction or a calculated amount representing the proportion of the taxpayer's income that is subject to tax in the other jurisdiction compared to income from all sources which is taxable to a New Jersey resident. According to the Department of the Treasury, if a taxpayer obtains a final judgement from a tax court or tribunal and is refunded taxes paid to another state or jurisdiction, then the tax credit initially awarded to the taxpayer for taxes paid to another jurisdiction would be disallowed because the income sourced to another state (that served as the basis for the initial credit) would be sourced to New Jersey instead. This income would not be subject to taxation by the other state; it would be subject to New Jersey gross income tax. The taxpayer would have to file an amended return to apply for the credit.

*Employee Relocation Grant Program.* The bill establishes an annual \$35 million grant program to be administered by the Economic Development Authority, through which the authority will provide grants to businesses that assign employees, who are New Jersey residents assigned to locations outside of the State, to New Jersey locations. To be eligible for a grant, a business must have 25 or more full-time employees and be principally located in another State. The grant would be equal to the New Jersey gross income tax withholdings of resident employees who are reassigned by an eligible business to a New Jersey location, as certified by the Director of the Division of Taxation, up to a maximum of \$500,000. Given that this is a new program, and that the OLS can neither predict how many businesses will relocate employees to New Jersey nor the amount of gross income tax paid by those residents, the total amount of grants that will be awarded is unknown. The OLS notes that the grant program will have a limited duration since the bill requires grant applications to be submitted by July 1, 2028.

*Section: Revenue, Finance, and Appropriations*

*Analyst: Scott A. Brodsky*  
*Staff Fiscal and Budget Analyst*

*Approved: Thomas Koenig*  
*Legislative Budget and Finance Officer*

This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).

**SENATE, No. 3128**

**STATE OF NEW JERSEY**  
**220th LEGISLATURE**

INTRODUCED OCTOBER 3, 2022

**Sponsored by:**

**Senator JOSEPH A. LAGANA**

**District 38 (Bergen and Passaic)**

**Senator JON M. BRAMNICK**

**District 21 (Morris, Somerset and Union)**

**Co-Sponsored by:**

**Senator Sarlo**

**SYNOPSIS**

Concerns tax treatment of individual's income earned outside state of residence.

**CURRENT VERSION OF TEXT**

As introduced.



1 AN ACT concerning taxes paid to other jurisdictions under the gross  
2 income tax, amending N.J.S.54A:4-1 and N.J.S.54A:5-8,  
3 supplementing Title 54A of the New Jersey Statutes and P.L.1974,  
4 c.80 (C.34:1B-1 et seq.), and making an appropriation.  
5

6 **BE IT ENACTED** by the Senate and General Assembly of the State  
7 of New Jersey:  
8

9 1. N.J.S.54A:4-1 is amended to read as follows:

10 54A:4-1. Resident credit for tax of another state. (a) A resident  
11 taxpayer shall be allowed a credit against the tax otherwise due under  
12 this act for the amount of any income tax or wage tax imposed for the  
13 taxable year by another state of the United States or political  
14 subdivision of such state, or by the District of Columbia, with respect  
15 to income which is also subject to tax under this act, except as  
16 provided by subsections (c) and (d) of this section.

17 (b) The credit provided under this section shall not exceed the  
18 proportion of the tax otherwise due under this act that the amount of  
19 the taxpayer's income subject to tax by the other jurisdiction bears to  
20 his entire New Jersey income.

21 (c) No credit shall be allowed against the tax otherwise due under  
22 this act for the amount of any income tax or wage tax imposed for the  
23 taxable year on S corporation income allocated to this State.

24 (d) No credit shall be allowed for the amount of any taxes paid or  
25 accrued for the taxable year on or measured by profits or income  
26 imposed on or paid on behalf of a person other than the taxpayer,  
27 whether or not the taxpayer may be held liable for the tax.

28 (e) Readjustment of the tax of another state or political subdivision  
29 thereof--if the taxpayer is allowed credit under this section for more  
30 or less of the tax of another state or political subdivision thereof than  
31 he is finally required to pay, the taxpayer shall send notice of the  
32 difference to the director who shall redetermine the tax for any years  
33 affected regardless of any otherwise applicable statute of limitations.  
34 A taxpayer may readjust the credit under this subsection when  
35 another state changes or corrects income reportable there either  
36 within the limitation period prescribed in N.J.S.54A:9-8 or within  
37 one year after the date the taxpayer received notification that the  
38 other state's income tax was due, whichever of such periods expires  
39 later. The division shall not allow a credit or refund unless the  
40 taxpayer files a claim within such period.

41 (f) A resident taxpayer shall be allowed a credit against the tax  
42 otherwise due under this act for the amount of any tax that the  
43 director determines is substantially similar to the tax imposed  
44 pursuant to section 3 of P.L.2019, c.320 (C.54A:12-3), for the taxable  
45 year, by another state of the United States or political subdivision of

**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.**

1 such state, or by the District of Columbia, with respect to the direct  
2 and indirect distributive proceeds from a pass-through entity, which  
3 distributive proceeds are also subject to tax under this act. A credit  
4 allowed pursuant to this subsection shall not exceed what would have  
5 been allowed if the income was taxed at the individual level and not  
6 taxed at the entity level.

7 For purposes of this subsection, "distributive proceeds" and "pass-  
8 through entity" mean the same as those terms are used in section 2 of  
9 P.L.2019, c.320 (C.54A:12-2).  
10 (cf: P.L.2019, c.320, s.8)

11

12 2. N.J.S.54A:5-8 is amended to read as follows:

13 54A:5-8. a. Income from sources within this State for a  
14 nonresident individual, estate or trust means the income from the  
15 categories of gross income enumerated and classified under chapter  
16 5 of this act to the extent that it is earned, received or acquired from  
17 sources within this State:

18 (1) By reason of ownership or disposition of any interest in real  
19 or tangible personal property in this State; or

20 (2) In connection with a trade, profession, occupation carried on  
21 in this State or for the rendition of personal services performed in this  
22 State; or

23 (3) As a distributive share of the income of an unincorporated  
24 business, profession, enterprise, undertaking or other activity as the  
25 result of work done, services rendered or other business activities  
26 conducted in this State except as allocated to another state pursuant  
27 to regulations promulgated by the director under this act; or

28 (4) From intangible personal property employed in a trade,  
29 profession, occupation or business carried on in this State; or

30 (5) As a result of any lottery or wagering transaction in this State  
31 other than that excluded from taxation pursuant to N.J.S.54A:6-11;  
32 or

33 (6) As S corporation income allocated to this State of a New  
34 Jersey S corporation.

35 b. Income from sources within this State for a nonresident  
36 individual shall not include income from pensions and annuities as  
37 set forth in subsection j. of N.J.S.54A:5-1.

38 c. For purposes of paragraphs (2) through (4) of subsection a. of  
39 this section, a nonresident taxpayer shall not be deemed to be  
40 carrying on a trade, profession, occupation, business, enterprise,  
41 undertaking or other activity in this State, or to be rendering personal  
42 services in this State, solely as a result of the purchase, holding and  
43 sale of intangible personal property by the trade, profession,  
44 occupation, business, enterprise or undertaking, to the extent that (1)  
45 the activities related to the intangible personal property are for the  
46 account of the trade, profession, occupation, business, enterprise, or  
47 undertaking and (2) the trade, profession, occupation, business,  
48 enterprise, or undertaking does not hold the intangible personal

1 property for sale to customers. For the purposes of this subsection:  
2 "intangible personal property" includes, but is not limited to,  
3 "commodities", as defined in paragraph (2) of subsection (e), and  
4 "securities," as defined in paragraph (2) of subsection (c), of section  
5 475 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.475;  
6 and "purchase, holding and sale of intangible personal property"  
7 includes activities incidental thereto giving rise to income, including  
8 commitment fees, breakup fees, income from securities lending, and  
9 any other incidental activities as prescribed or authorized by the  
10 director. The director shall adopt such regulations as the director  
11 deems necessary to accomplish the purposes of this section.

12 d. (1) The provisions of subsection c. of this section shall not apply  
13 to income from investment management services provided to a  
14 partnership, S corporation, or other entity.

15 (2) As used in this subsection:

16 "Investment management services" means providing a substantial  
17 quantity of any of the following services to a partnership, S  
18 corporation, or other entity as a partner thereto:

19 (a) advising as to the advisability of investing in, purchasing, or  
20 selling a specified asset;

21 (b) managing, acquiring, or disposing of a specified asset;

22 (c) arranging financing with respect to acquiring specified assets;

23 or

24 (d) any activity in support of the services described in  
25 subparagraphs (a) through (c) of this paragraph.

26 A partner shall not be deemed to be providing investment  
27 management services under this section if the partnership interest is  
28 held directly or indirectly by a corporation, or any capital interest in  
29 the partnership, which provides the taxpayer with a right to share in  
30 partnership capital commensurate with the amount of capital  
31 contributed, determined at the time of receipt of such partnership  
32 interest, or the value of partnership interest subject to tax under  
33 section 83 of the Internal Revenue Code (26 U.S.C. s.83), upon the  
34 receipt or vesting of such interest.

35 "Specified asset" means certain securities, real estate held for  
36 rental or investment, interests in partnerships, commodities, or  
37 options or derivatives contracts, except if at least 80 percent of the  
38 average fair market value of the specified assets of the partnership, S  
39 corporation, or other entity during the taxable year consists of real  
40 estate.

41 (3) This subsection shall remain inoperative until enactment into  
42 law by the states of Connecticut, New York, and Massachusetts of  
43 legislation having an identical effect with this subsection, sections 7  
44 and 9 of P.L.2018, c.45 (C.54A:5-16 and C.54:10A-6.4), and  
45 subsection (D) of section 6 of P.L.1945, c.162 (C.54:10A-6), as shall  
46 be determined by the Director of the Division of Taxation in the  
47 Department of the Treasury.

1       e. If an employee's state of residence uses a "convenience of the  
2 employer" test when determining the source of income of a  
3 nonresident, income or wages earned by a nonresident are allocated  
4 to the employer's location, unless the nonresident works from an out-  
5 of-state location due to the necessity of the employer, rather than the  
6 convenience of the employee.

7 (cf: P.L.2018, c.45, s.6)

8  
9       3. (New section) a. For taxable years beginning on and after  
10 January 1, 2020 but before January 1, 2024, a resident taxpayer who:  
11 (1) pays any income tax or wage tax imposed for the taxable year by  
12 another state of the United States, or political subdivision of such  
13 state, or by the District of Columbia; (2) applies for and is denied a  
14 refund from such state or jurisdiction for taxes paid to that state or  
15 jurisdiction on income derived from services rendered while the  
16 resident taxpayer was within New Jersey; (3) files an appeal with a  
17 tax court or tribunal through which the resident taxpayer formally  
18 protests the denial by another state or jurisdiction of the refund  
19 requested by the resident taxpayer for taxes paid on income derived  
20 from services rendered while the resident taxpayer was within New  
21 Jersey; and (4) obtains a final judgement from the tax court or  
22 tribunal resulting in the resident taxpayer being refunded taxes paid  
23 to another state or jurisdiction on income derived from services  
24 rendered while the resident taxpayer was within New Jersey shall be  
25 allowed a credit against the tax otherwise due for the taxable year  
26 under the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et  
27 seq., in amount equal to 50 percent of the amount of taxes that are  
28 refunded by such tax court or tribunal and allocated to this State.

29       b. If the amount of the credit allowed pursuant to subsection a. of  
30 this section exceeds the amount of tax otherwise due, that amount of  
31 excess shall be an overpayment for the purposes of N.J.S.54A:9-7;  
32 provided, however, that subsection (f) of N.J.S.54A:9-7 shall not  
33 apply.

34  
35       4. (New section) a. There is established a pilot program, to be  
36 administered by the New Jersey Economic Development Authority,  
37 through which the authority shall provide grants to businesses to  
38 assign their employees, who are New Jersey residents assigned to  
39 locations outside of the State, to New Jersey locations. A business  
40 shall be eligible for a grant under the pilot program if the business  
41 has 25 or more full time employees and is legally domiciled in  
42 another state.

43       b. A business seeking a grant pursuant to this section shall submit  
44 an application for approval to the authority in the form and manner  
45 prescribed by the chief executive officer of the authority. Following  
46 approval of an application, but before the disbursement of grant  
47 funds, the authority shall require the business to enter into a grant  
48 agreement. The grant agreement shall, at a minimum, specify the

1 amount of the grant to be awarded to the business and the minimum  
2 number of resident employees the business shall assign to the State.  
3 If the authority determines that the business made a material  
4 misrepresentation on the business's grant application or if the  
5 business fails to comply with any requirement set forth in the grant  
6 agreement, then the business shall return to the authority any grant  
7 awarded pursuant to this section.

8 c. The value of the grant shall be the net revenue realized by the  
9 State through New Jersey Gross Income Tax paid by resident  
10 employees re-assigned by the business to a New Jersey location or  
11 \$100,000, whichever is less. In awarding the grants made available  
12 by this section, the authority may establish a preference for  
13 businesses that acquire or lease office space in this State and make a  
14 capital investment in such office space. The sum of all grants  
15 awarded pursuant to this section shall not exceed \$10,000,000 in any  
16 State fiscal year.

17 As used in this subsection, "capital investment" means expenses  
18 that the business incurs, or are incurred on behalf of the business by  
19 its landlord, for construction, repair, renovation, improvement,  
20 equipping, or furnishing of a building or structure acquired or leased  
21 by the business and used in connection with the operation of the  
22 business.

23  
24 5. Notwithstanding the provisions of the "Administrative  
25 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), to the  
26 contrary, the Director of the Division of Taxation in the Department  
27 of the Treasury may adopt, immediately upon filing with the Office  
28 of Administrative Law, regulations that the director deems necessary  
29 to implement the provisions of sections 1 through 3 of this act, which  
30 regulations shall be effective for a period not to exceed 180 days from  
31 the date of the filing. The director shall thereafter amend, adopt, or  
32 readopt the regulations in accordance with the requirements of  
33 P.L.1968, c.410 (C.52:14B-1 et seq.).

34  
35 6. There is appropriated from the General Fund to the New Jersey  
36 Economic Development Authority the sum of \$10,000,000, subject  
37 to the approval of the Director of Budget and Accounting, for the  
38 grants authorized pursuant to section 4 of this act.

39  
40 7. This act shall take effect immediately, except that section 2 shall  
41 first apply to taxable years beginning on or after January 1, 2023.

42  
43

44 STATEMENT

45

46 The bill creates a "convenience of the employer" test for residents  
47 of states that impose a similar test. This means that if an employee's  
48 state of residence uses a convenience of the employer test when

1 determining the source of income of nonresidents, and the employee  
2 works for a New Jersey employer from a location in their state of  
3 residence for their own convenience, then the New Jersey employer  
4 must include those days as days worked in New Jersey and withhold  
5 accordingly.

6 The bill also establishes a tax credit available to resident taxpayers  
7 who: (1) pay any income tax or wage tax imposed for the taxable year  
8 by another state of the United States, or political subdivision of such  
9 state, or by the District of Columbia; (2) apply for and are denied a  
10 refund from such state or jurisdiction for taxes paid to that state or  
11 jurisdiction on income derived from services rendered while the  
12 resident taxpayer was within New Jersey; (3) file an appeal with a  
13 tax court or tribunal through which the resident taxpayer formally  
14 protests the denial by another state or jurisdiction of the refund  
15 requested by the resident taxpayer for taxes paid on income derived  
16 from services rendered while the resident taxpayer was within New  
17 Jersey; and (4) obtain a final judgement from the tax court or tribunal  
18 resulting in the resident taxpayer being refunded taxes paid to another  
19 state or jurisdiction on income derived from services rendered while  
20 the resident taxpayer was within New Jersey. The amount of the tax  
21 credit would be equal to 50 percent of the amount of taxes that are  
22 refunded by such tax court or tribunal and allocated to this State.

23 Finally, the bill establishes a pilot program, to be administered by  
24 the New Jersey Economic Development Authority, through which the  
25 authority will provide grants to businesses to assign their New Jersey  
26 resident employees to New Jersey locations. A business is eligible  
27 for a grant under the pilot program if the business has 25 or more full  
28 time employees and is legally domiciled in another state. The bill  
29 appropriates \$10,000,000 for the purposes of the grant program.

# SENATE BUDGET AND APPROPRIATIONS COMMITTEE

## STATEMENT TO

### **SENATE, No. 3128**

with committee amendments

# **STATE OF NEW JERSEY**

DATED: DECEMBER 5, 2022

The Senate Budget and Appropriations Committee reports favorably Senate Bill No. 3128, with committee amendments.

This bill, as amended, creates a "convenience of the employer" test for residents of states that impose a similar test. This means that for an individual who is a nonresident of this State and who has income from employee compensation from a New Jersey employer for the performance of personal services performed outside of New Jersey, but that location for the performance of the personal services is not necessitated by the employer, and whose state of residence imposes an income or wage tax that requires employee compensation be sourced to an employer's location if a nonresident of that state renders the personal services as an employee from an out-of-state location for the convenience of the employee and not due to the necessity of the employer, that same sourcing rule will apply to that income of a nonresident of this State who is rendering personal services for an employer located in this State.

In addition, the bill establishes a refundable tax credit available to resident taxpayers who: (1) pay any income tax or wage tax imposed for the taxable year by another state of the United States, or political subdivision of such state, or by the District of Columbia; (2) apply for and are denied a refund from such state or jurisdiction for taxes paid to that state or jurisdiction on income derived from services rendered while the resident taxpayer was within New Jersey; (3) file an appeal with a tax court or tribunal through which the resident taxpayer formally protests the denial by another state or jurisdiction of the refund requested by the resident taxpayer for taxes paid on income derived from services rendered while the resident taxpayer was within New Jersey; and (4) obtain a final judgement from the tax court or tribunal resulting in the resident taxpayer being refunded taxes paid to another state or jurisdiction on income derived from services rendered while the resident taxpayer was within New Jersey. Under the bill, as amended, the amount of the tax credit would be equal to 50 percent of the amount of taxes that are owed to the State of New Jersey as a result of the readjustment of the credit for tax of another state pursuant to subsection (e) of N.J.S.54A:4-1.

The bill, as amended, also establishes a nonrefundable tax credit in the amount of \$2,000 for certain qualified taxpayers. As amended, the bill defines “qualified taxpayer” as a taxpayer who is a New Jersey resident and whose employer has assigned that individual a work location outside of the State, who seeks from the employer and accepts a permanent reassignment of work location to a New Jersey location during the taxable year. Under the bill, as amended, a qualified taxpayer does not include an individual who received a credit pursuant to this section in a prior taxable year. The bill, as amended, requires the New Jersey Economic Development Authority to determine the taxpayer’s eligibility for a tax credit, and to issue a certification awarding the tax credit to the taxpayer. The bill, as amended, caps the total value of tax credits approved by the authority at \$10,000,000 in any fiscal year.

In addition, the bill establishes a pilot program, to be administered by the New Jersey Economic Development Authority, through which the authority will provide grants to businesses to assign their New Jersey resident employees to New Jersey locations. Under the bill, as amended, a business is eligible for a grant under the pilot program if the business has 25 or more full time employees and is principally located in another state. As amended, the bill appropriates \$25,000,000 for the purposes of the grant program.

#### COMMITTEE AMENDMENTS:

The committee amended the bill to:

- replace the bill’s language concerning the use of the “convenience of the employer” test with language clarifying that, for an individual who is a nonresident of this State and who has income from employee compensation from a New Jersey employer for the performance of personal services performed outside of New Jersey, but that location for the performance of the personal services is not necessitated by the employer, and whose state of residence imposes an income or wage tax that requires employee compensation be sourced to an employer’s location if a nonresident of that state renders the personal services as an employee from an out-of-state location for the convenience of the employee and not due to the necessity of the employer, that same sourcing rule will apply to that income of a nonresident of this State who is rendering personal services for an employer located in this State;
- revise the amount of the refundable credit allowed under the bill to 50 percent of the amount of taxes that are owed to the State of New Jersey as a result of the readjustment of the credit for tax of another state pursuant to subsection (e) of N.J.S.54A:4-1;
- establish a nonrefundable credit in the amount of \$2,000 for “qualified taxpayers”;

- define “qualified taxpayer” as a taxpayer who is a New Jersey resident and whose employer has assigned that individual a work location outside of the State, who seeks from the employer and accepts a permanent reassignment of work location to a New Jersey location during the taxable year;
- provide that a “qualified taxpayer” does not include an individual who received a nonrefundable credit pursuant to the bill in a prior taxable year;
- cap the value of nonrefundable tax credits approved by the authority pursuant to the bill at \$10,000,000 in any fiscal year;
- revise the “legally domiciled” requirement under the pilot program established by the bill to provide that, to be eligible for a grant under the pilot program, a business is required to have 25 or more employees and be principally located in another state;
- provide that the value of the grant under the pilot program established by the bill will be the net revenue realized by the State through New Jersey Gross Income Tax paid by resident employees re-assigned by the business to a New Jersey location, as certified by the Director of the Division of Taxation, or \$100,000, whichever is less;
- increase the cap on the sum of all grants awarded under the pilot program to \$25,000,000 per State fiscal year;
- increase the amount appropriated from the General Fund to the New Jersey Economic Development Authority to \$25,000,000;
- clarify that the appropriation made under the bill is subject to the approval of the Director of Budget and Accounting in the Department of the Treasury; and
- revise certain internal citations.

**FISCAL IMPACT:**

The Office of Legislative Services (OLS) concludes that the bill will have an indeterminate net impact on State finances, comprised of the following four components:

- 1) Annual State revenue increase to the extent that the adoption of a “convenience of the employer” rule allows the State to tax income earned by nonresident employees of New Jersey firms if they work at their home outside of New Jersey for their own convenience.
- 2) Annual State revenue decrease in fiscal years 2023 and 2024 from a new tax credit program for New Jersey resident taxpayers who file successful legal actions against other states that collect taxes paid on income derived from services rendered while the resident taxpayers were within New Jersey.
- 3) Annual State revenue decrease of up to \$10 million from a new tax credit program for individuals who seek from their

employer and accept a reassignment from an out-of-State location to an in-State location.

- 4) Annual State expenditure increase of up to \$25 million for a new employee relocation grant program to be administered by the Economic Development Authority. The bill makes an initial one-time \$25 million appropriation from the General Fund for the grant program.

STATEMENT TO  
[First Reprint]  
**SENATE, No. 3128**

with Senate Floor Amendments  
(Proposed by Senator LAGANA)

ADOPTED: DECEMBER 19, 2022

These Senate amendments clarify that the provisions of the bill would not affect any agreements entered into by the Division of Taxation with another state concerning the payment of income taxes by residents and out-of-state workers. Under State law, the Division of Taxation is permitted to enter into agreements with the taxing authorities of another state to exempt New Jersey residents from the payment of income taxes to that state. Likewise, these agreements may exempt residents of the other state from paying income taxes to New Jersey. The PA/NJ Reciprocal Income Tax Agreement currently in place between Pennsylvania and New Jersey is one such agreement and allows residents of both states to pay income taxes based on the state where they reside rather than the location of their employer. The purpose of these amendments is to not only protect this agreement, but to provide the Division of Taxation with the flexibility to enter into similar agreements with other states in the future.

STATEMENT TO  
[Second Reprint]  
**SENATE, No. 3128**

with Senate Floor Amendments  
(Proposed by Senator LAGANA)

ADOPTED: JUNE 20, 2023

These floor amendments modify the "convenience of the employer" test created by the bill to provide the following: for an individual who is a nonresident of this State and who has income from employee compensation from a New Jersey employer for the performance of personal services performed outside of New Jersey that were not required by the employer to be performed outside of New Jersey, and whose state of residence imposes an income or wage tax that requires employee compensation to be sourced to an employer's location if the nonresident renders the personal services from an out-of-state location for the convenience of the nonresident employee and not due to the necessity of the employer, that same sourcing rule will apply to that income of the nonresident.

The amendments also remove a section establishing a nonrefundable tax credit in the amount of \$2,000 for certain qualified taxpayers. The section defined a "qualified taxpayer" as a taxpayer who is a New Jersey resident and whose employer has assigned that individual a work location outside of the State, who seeks from the employer and accepts a permanent reassignment of work location to a New Jersey location during the taxable year. A qualified taxpayer did not include an individual who received a credit pursuant to this section in a prior taxable year. The section also required the New Jersey Economic Development Authority to determine the taxpayer's eligibility for a tax credit, and to issue a certification awarding the tax credit to the taxpayer. The section capped the total value of tax credits approved by the authority at \$10,000,000 in any fiscal year. The amendments remove these provisions from the bill entirely.

The amendments modify certain provisions concerning the pilot program created by the bill. The amendments require any business seeking a grant under the pilot program to submit an application for approval to the New Jersey Economic Development Authority (EDA) on or before July 1, 2028, in the form and manner prescribed by the chief executive officer of the EDA.

The amendments also modify certain requirements concerning grant agreements entered into under the pilot program. The amendments provide that in awarding the grants made available for the pilot program pursuant to the bill, the EDA may establish a preference for businesses that: acquire or lease office space in this State and make a capital investment in such office space; submit to the authority a plan showing that the business will provide bonuses to, or otherwise

increase the compensation of, employees relocating to the State; or both. The amendments require a grant agreement to specify the amount of the grant to be awarded to a business, the minimum number of resident employees the business is to assign to the State, and, if applicable, the terms governing actions proposed to be undertaken by the business for the purpose of receiving the preference.

The amendments modify the value of the grant to be awarded to a business under the pilot program, providing that the value of the grant is to be the New Jersey Gross Income Tax withholdings of resident employees re-assigned by the business to a New Jersey location, as certified by the Director of the Division of Taxation, or \$500,000, whichever is less. The amendments provide that the sum of all grants awarded under the pilot program is not to exceed \$35,000,000 in any State fiscal year, and the amendments appropriate this sum from the General Fund to the EDA.

STATEMENT TO  
[Third Reprint]  
**SENATE, No. 3128**

with Senate Floor Amendments  
(Proposed by Senator LAGANA)

ADOPTED: JUNE 26, 2023

These floor amendments modify the "convenience of the employer" test created by the bill to provide the following: for an individual who is a nonresident of this State and who has income from employee compensation from a New Jersey employer for the performance of personal services performed outside of New Jersey that were not required by the employer to be performed outside of New Jersey, and whose state of residence imposes an income or wage tax that requires employee compensation to be sourced to an employer's location if the nonresident renders the personal services from an out-of-state location for the convenience of the nonresident employee and not due to the necessity of the employer, this State will impose a similar New Jersey sourcing rule on that income of the nonresident. The amendments authorize the Director of the Division of Taxation in the Department of the Treasury to adopt, immediately upon filing with the Office of Administrative Law, regulations that the director deems necessary to implement this provision, which regulations will be effective for a period not to exceed 180 from the date of filing.

**LEGISLATIVE FISCAL ESTIMATE**  
**SENATE, No. 3128**  
**STATE OF NEW JERSEY**  
**220th LEGISLATURE**

DATED: DECEMBER 5, 2022

**SUMMARY**

**Synopsis:** Concerns tax treatment of individual’s income earned outside state of residence.

**Type of Impact:** Indeterminate net impact on State revenues.  
Increase in State costs.

**Agencies Affected:** Department of the Treasury.  
Economic Development Authority.

**Office of Legislative Services Estimate**

| <b>Fiscal Impact</b>        | <b><u>FY 2024 and Annually Thereafter</u></b> |
|-----------------------------|---|
| <b>State Revenue Impact</b> | Indeterminate Net Impact                      |
| <b>State Cost Increase</b>  | Up to \$10,000,000                            |

- The Office of Legislative Services (OLS) concludes that the bill will have an indeterminate net impact on annual State revenues. Additional income tax revenues collected by the State due to the implementation of a “convenience of the employer” test may be offset by tax credits awarded to New Jersey resident taxpayers who are refunded taxes paid to other states or jurisdictions under certain circumstances. The OLS lacks the informational basis to project the magnitude of the two countervailing State revenue effects.
- The bill establishes an annual \$10 million new employee relocation grant program to be administered by the Economic Development Authority.

**BILL DESCRIPTION**

The bill establishes a “convenience of the employer” test for residents of states that impose a similar test. This means that if an employee’s state of residence uses a convenience of the employer test when determining the source of income of nonresidents, and the employee works for a New Jersey employer from a location in the employee’s state of residence for the employee’s own convenience, then the New Jersey employer must include those days as days worked in New Jersey and withhold income tax accordingly.

The bill also provides a refundable gross income tax credit to resident taxpayers who: (1) pay any income tax or wage tax imposed for the taxable year by another state of the United States, or political subdivision of such state, or by the District of Columbia; (2) apply for and are denied a refund from such state or jurisdiction for taxes paid to that state or jurisdiction on income derived from services rendered while the resident taxpayer was within New Jersey; (3) file an appeal with a tax court or tribunal through which the resident taxpayer formally protests the denial of the refund request; and (4) obtain a final judgement from the tax court or tribunal in the resident taxpayers' favor. The credit would be equal to 50 percent of the amount of taxes that are refunded by such tax court or tribunal and allocated to New Jersey.

Finally, the bill establishes a pilot program, to be administered by the Economic Development Authority, through which the authority will provide grants to businesses to assign their New Jersey resident employees to New Jersey locations. A business is eligible for a grant if the business has 25 or more full time employees and is legally domiciled in another state. The bill caps the sum of all grants awarded in any fiscal year at \$10 million and makes an initial one-time \$10 million appropriation from the General Fund for the grant program.

## **FISCAL ANALYSIS**

### ***EXECUTIVE BRANCH***

The OLS has not received a fiscal estimate for this bill from the Executive. The Department of the Treasury has provided information which enhances OLS understanding of the bill.

### ***OFFICE OF LEGISLATIVE SERVICES***

The OLS concludes that the bill will have an indeterminate net impact on State revenues and result in an increase in State costs of up to \$10 million in the first year of implementation.

*Convenience of the Employer Test.* Under current law, nonresidents are taxed on all income sourced to New Jersey. For nonresidents earning income in New Jersey and another state, their New Jersey gross income tax liability is based on the percentage of their total income that comes from New Jersey. Income is sourced based on where the service or employment is performed. Compensation paid for work performed by nonresident employees who are physically present in New Jersey is subject to tax. The amount of tax due is calculated using a method of allocation which takes into account the number of days a nonresident taxpayer works in New Jersey, the total number of days the nonresident taxpayer worked in the entire year, and their total income for the entire year.

New Jersey currently does not have a convenience of the employer test. If nonresident employees are working for a New Jersey employer only remotely from their home state, the compensation paid to the employees would not be subject to the gross income tax because the work is not being performed in New Jersey. The enactment of a convenience of the employer test would allow New Jersey to tax income earned by these nonresident taxpayers even though they are not physically present in New Jersey, thereby generating additional State gross income tax revenues. Information on the total amount of untaxed income earned by these employees (or nonresident taxpayers) and the amount of additional gross income tax revenue that may be generated by taxing that income is unknown.

*New Tax Credit for Resident Taxpayers.* The bill establishes a new tax credit to be awarded to New Jersey resident taxpayers who file successful legal actions against other states that collect taxes paid on income derived from services rendered while the resident taxpayers were within New

Jersey. The tax credit is equal to 50 percent of the amount of taxes paid to another jurisdiction that are refunded to the taxpayer by a tax court or tribunal and allocated to New Jersey. The OLS cannot predict the magnitude of the State revenue loss because the amount of tax credits awarded will be driven by the amount of taxes refunded to New Jersey taxpayers by tax courts and tribunals in other states.

Under current law, New Jersey taxpayers are allowed a credit against their gross income tax liability for taxes paid to other jurisdictions when their income is subject to tax by both New Jersey and the outside jurisdiction. The credit is equal to the greater of the tax paid to the other jurisdiction or a calculated amount representing the proportion of taxpayer's income that is subject to tax in the other jurisdiction as compared to income from all sources which is taxable to a New Jersey resident. According to the Department of the Treasury, if a taxpayer obtains a final judgement from the tax court or tribunal and is refunded taxes paid to another state or jurisdiction, then the tax credit initially awarded to the taxpayer for taxes paid to another jurisdiction would be disallowed because the income sourced to another state (that served as the basis for the initial credit) would be sourced to New Jersey instead. This income would not be subject to taxation by the other state; it would be subject to the New Jersey gross income tax. The taxpayer would have to file an amended tax return to apply for the new credit.

*Employee Relocation Grant Program.* The bill establishes an annual \$10 million grant program to be administered by the Economic Development Authority, through which the authority will provide grants to businesses that assign employees, who are New Jersey residents assigned to locations outside of the State, to New Jersey locations. To be eligible for a grant, a business must have 25 or more full-time employees and be legally domiciled in another State. The grant award would equal the net revenue realized by the State through New Jersey gross income taxes paid by resident employees who are reassigned by an eligible business to a New Jersey location, up to a maximum of \$100,000. Given that this is a new program and that the OLS can predict neither how many eligible businesses will relocate employees to New Jersey nor the amount of gross income tax revenue paid by those residents, the total amount of grants that will be awarded is unknown.

*Section: Revenue, Finance, and Appropriations*

*Analyst: Scott A. Brodsky  
Principal Fiscal Analyst*

*Approved: Thomas Koenig  
Legislative Budget and Finance Officer*

This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).

# LEGISLATIVE FISCAL ESTIMATE

[Third Reprint]

## SENATE, No. 3128

### STATE OF NEW JERSEY 220th LEGISLATURE

DATED: JUNE 28, 2023

#### SUMMARY

**Synopsis:** Concerns tax treatment of individual’s income earned outside State of residence; appropriates \$35 million.

**Type of Impact:** Indeterminate net impact on State revenues.  
Increase in State costs.

**Agencies Affected:** Department of the Treasury.  
Economic Development Authority.

#### Office of Legislative Services Estimate

| <b>Fiscal Impact</b>        | <b><u>FY 2024 &amp; Annually Thereafter</u></b> |
|-----------------------------|---|
| <b>State Revenue Impact</b> | Indeterminate Net Impact                        |
| <b>State Cost Increase</b>  | Up to \$35,000,000                              |

The Office of Legislative Services (OLS) concludes that the bill have an indeterminate impact on State finances, comprised of the following three components:

- 1) Annual State revenue increase to the extent that the adoption of a “convenience of the employer” rule allows the State to tax income earned by nonresident employees of New Jersey firms if they work at their home outside of New Jersey for their own convenience.
- 2) Annual State revenue decrease in fiscal years 2023 and 2024 from a new tax credit program for New Jersey resident taxpayers who file successful legal actions against other states that collect taxes paid on income derived from services rendered while the resident taxpayers were within New Jersey.
- 3) Annual State expenditure increase of up to \$35 million for a new employee relocation grant program to be administered by the Economic Development Authority. The OLS notes that the new grant program will be of limited duration as grant applications must be filed by July 1, 2028.

## **BILL DESCRIPTION**

The bill establishes a “convenience of the employer test” for residents of states that impose a similar test. This means that for an individual who is a nonresident of this State and who has income from employee compensation from a New Jersey employer for the performance of personal services performed outside of New Jersey that were not required to be performed outside of New Jersey, and whose state of residence imposes an income or wage tax that requires employee compensation to be sourced to an employer’s location if the nonresident renders the personal services from an out-of-state location for the convenience of the nonresident employee and not due to the necessity of the employer, that same sourcing rule will apply to that income of the nonresident.

The bill also provides a refundable gross income tax credit available to New Jersey resident taxpayers who obtain a final judgment from another state’s or jurisdiction’s tax court or tribunal in the resident taxpayer’s favor resulting in the resident taxpayer being refunded taxes paid to that state or jurisdiction on the basis that the income was derived from services rendered while the resident taxpayer was within New Jersey. The credit would be equal to 50 percent of the amount of taxes that are owed to New Jersey as a result of the readjustment of New Jersey’s credit for taxes paid to another State.

The bill establishes a pilot program, to be administered by the Economic Development Authority, through which the authority will provide grants to businesses to assign their New Jersey resident employees to New Jersey locations. A business is eligible for a grant if the business has 25 or more full-time employees and is principally located in another State. The bill caps the sum of all grants awarded in any fiscal year at \$35 million and makes an initial one-time appropriation from the General Fund for the grant program. The bill requires grant applications to be filed on or before July 1, 2028.

Finally, the bill clarifies that its provisions would not affect any agreements entered into by the Division of Taxation with another state concerning the payment of income taxes by residents and out-of-state workers. Under State law, the Division of Taxation is permitted to enter into agreements with the taxing authorities of another state to exempt New Jersey residents from the payment of income taxes to that state.

## **FISCAL ANALYSIS**

### ***EXECUTIVE BRANCH***

The OLS has not received a fiscal estimate from the Executive. The Department of the Treasury has provided information which enhances OLS understanding of the bill.

### ***OFFICE OF LEGISLATIVE SERVICES***

The OLS concludes that the bill have an indeterminate impact on State finances, comprised of the following three components:

- 1) Annual State revenue increase to the extent that the adoption of a “convenience of the employer” rule allows the State to tax income earned by nonresident employees of New Jersey firms if they work at their home outside of New Jersey for their own convenience.

2) Annual State revenue decrease in fiscal years 2023 and 2024 from a new tax credit program for New Jersey resident taxpayers who file successful legal actions against other states that collect taxes paid on income derived from services rendered while the resident taxpayers were within New Jersey.

3) Annual State expenditure increase of up to \$35 million for a new employee relocation grant program to be administered by the Economic Development Authority. The OLS notes that the new grant program will be of limited duration as grant applications must be filed by July 1, 2028.

*Convenience of the Employer Test.* Under current law, nonresidents are taxed on all income sourced to New Jersey. For nonresidents earning income in New Jersey and another state, their New Jersey gross income tax liability is based on the percentage of total income that comes from New Jersey. Income is sourced based on where the service or employment is performed. Compensation paid for work performed by nonresident employees who are physically present in New Jersey is subject to tax. The amount of tax due is calculated using a method of allocation which takes into account the number of days a nonresident works in New Jersey, the total number of days the nonresident worked in the entire year, and their total income for the entire year.

New Jersey currently does not have a convenience of the employer test. If nonresident employees are working for a New Jersey resident employer only remotely from their home state, the compensation paid to the employees would not be subject to the gross income tax because the work is not being performed in New Jersey. The enactment of a convenience of the employer test would allow New Jersey to tax income earned by nonresident taxpayers even though they are not physically present in New Jersey, thereby generating additional State gross income tax revenues. Information on the total amount of untaxed income earned by these employees (or nonresident taxpayers) and the amount of additional gross income tax revenue that may be generated by taxing that income is unknown.

*New Tax Credit for Resident Taxpayers.* The bill establishes a new tax credit to be awarded to New Jersey resident taxpayers who file successful legal actions against other states and jurisdictions that collect taxes paid on income derived from services rendered while the resident taxpayers were within New Jersey. The tax credit is equal to 50 percent of the amount of taxes paid to another state. The OLS cannot predict the magnitude of the State revenue loss because the amount of tax credits will be driven by the amount of income reallocated to New Jersey in accordance with a judgement issued by a tax court or tribunal in another jurisdiction. The State revenue loss will be temporally limited because the tax credit is effective from tax years 2020 through 2023 only.

Under current law, New Jersey taxpayers are allowed a credit against their gross income tax liability for taxes paid to other jurisdictions when their income is subject to tax by both New Jersey and the outside jurisdiction. The credit is equal to the greater of the tax paid to the other jurisdiction or a calculated amount representing the proportion of the taxpayer's income that is subject to tax in the other jurisdiction compared to income from all sources which is taxable to a New Jersey resident. According to the Department of the Treasury, if a taxpayer obtains a final judgement from a tax court or tribunal and is refunded taxes paid to another state or jurisdiction, then the tax credit initially awarded to the taxpayer for taxes paid to another jurisdiction would be disallowed because the income sourced to another state (that served as the basis for the initial credit) would be sourced to New Jersey instead. This income would not be subject to taxation by the other state; it would be subject to New Jersey gross income tax. The taxpayer would have to file an amended return to apply for the credit.

*Employee Relocation Grant Program.* The bill establishes an annual \$35 million grant program to be administered by the Economic Development Authority, through which the authority will provide grants to businesses that assign employees, who are New Jersey residents assigned to locations outside of the State, to New Jersey locations. To be eligible for a grant, a business must have 25 or more full-time employees and be principally located in another State. The grant would be equal to the New Jersey gross income tax withholdings of resident employees who are reassigned by an eligible business to a New Jersey location, as certified by the Director of the Division of Taxation, up to a maximum of \$500,000. Given that this is a new program, and that the OLS can neither predict how many businesses will relocate employees to New Jersey nor the amount of gross income tax paid by those residents, the total amount of grants that will be awarded is unknown. The OLS notes that the grant program will have a limited duration since the bill requires grant applications to be submitted by July 1, 2028.

*Section: Revenue, Finance, and Appropriations*

*Analyst: Scott A. Brodsky*  
*Staff Fiscal and Budget Analyst*

*Approved: Thomas Koenig*  
*Legislative Budget and Finance Officer*

This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).