

54A:2-1.2

LEGISLATIVE HISTORY CHECKLIST
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(Income Tax--non-residents)

NJSA: 54A:2-1.2

LAWS OF: 1993

CHAPTER: 320

BILL NO: S1589

SPONSOR(S) Kosco and Smith

DATE INTRODUCED: March 11, 1993

COMMITTEE: **ASSEMBLY:** Appropriations

SENATE: Budget

AMENDED DURING PASSAGE: Yes Amendments during passage
First reprint enacted denoted by superscript numbers

DATE OF PASSAGE: **ASSEMBLY:** December 2, 1993

SENATE: March 22, 1993

DATE OF APPROVAL: December 23, 1993

FOLLOWING STATEMENTS ARE ATTACHED IF AVAILABLE:

SPONSOR STATEMENT: Yes

COMMITTEE STATEMENT: **ASSEMBLY:** Yes

SENATE: Yes

FISCAL NOTE: ~~No~~ YES

VETO MESSAGE: No

MESSAGE ON SIGNING: No

FOLLOWING WERE PRINTED:

REPORTS: No

HEARINGS: No

Note: A1071 approved as 1993 c178, effective 7-9-93.

KBG:pp

P.L.1993, CHAPTER 320, approved December 23, 1993
1993 Senate No. 1589 (First Reprint)

1 **AN ACT** concerning the taxation of nonresident taxpayers under
2 the gross income tax, amending N.J.S.54A:3-1, 54A:5-7 and
3 P.L.1993 , c.*** (C.) (now pending before the Legislature as
4 Assembly Committee Substitute for Assembly, Nos. 1071, 2060,
5 and 886 of 1992) and supplementing Title 54A of the New
6 Jersey Statutes.
7
8 **BE IT ENACTED** by the Senate and General Assembly of the
9 State of New Jersey:
10 1. N.J.S.54A:3-1 is amended to read as follows:
11 54A:3-1. Personal exemptions and deductions. Each taxpayer
12 shall be allowed personal exemptions and deductions against his
13 gross income as follows:
14 (a) Taxpayer. Each taxpayer shall be allowed a personal
15 exemption of \$1,000.00 which may be taken as a deduction from
16 his New Jersey gross income.
17 (b) Additional exemptions. In addition to the personal
18 exemptions allowed in (a), the following additional personal
19 exemptions shall be allowed as a deduction from gross income:
20 1. For the taxpayer's spouse who does not file separately -
21 \$1,000.00.
22 2. For each dependent who qualifies as a dependent of the
23 taxpayer during the taxable year for federal income tax purposes
24 - \$1,500.00.
25 3. Taxpayer 65 years of age or over at the close of the taxable
26 year - \$1,000.00.
27 4. Taxpayer's spouse 65 years of age or over at the close of
28 the taxable year - \$1,000.00.
29 5. Blind or disabled taxpayer - \$1,000.00.
30 6. Blind or disabled spouse - \$1,000.00.
31 (c) Special Rule. The personal exemptions allowed under this
32 section shall be limited to that percentage which the total
33 number of months within a taxpayer's taxable year under this act
34 bears to 12. For this purpose 15 days or more shall constitute a
35 month.
36 (d) (Deleted by amendment, P.L. , c. (now pending as
37 Assembly Committee Substitute for Assembly, Nos. 1071, 2060,
38 and 886 of 1992))
39 (e) Nonresidents. For taxable years to which a certification
40 pursuant to section 3 of P.L.1993, c.*** (C.) (now pending
41 before the Legislature as this bill), applies, a nonresident
42 taxpayer shall be allowed the same deduction for personal

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:
1 Assembly floor amendments adopted November 15, 1993.

1 exemptions as a resident taxpayer. However, if (1) the
2 nonresident taxpayer's gross income which is subject to tax under
3 this act is exceeded by (2) the gross income which the nonresident
4 taxpayer would be required to report under this act if the
5 taxpayer were a resident by more than \$100.00, the taxpayer's
6 deduction for personal exemptions shall be limited by the
7 percentage which (1) is to (2).

8 (cf: P.L.1993, c.***, s.1 (now pending before the Legislature as
9 Assembly Committee Substitute for Assembly, Nos. 1071, 2060,
10 and 886 of 1992))

11 2. Section 4 of P.L.1993, c.178 (C.54A:2-1.1) is amended to
12 read as follows:

13 4. [Notwithstanding] a. For a taxable year to which a
14 certification pursuant to section 3 of P.L.1993, c.*** (C.)
15 (now pending before the Legislature as this bill) ¹[applies] does
16 not apply¹, notwithstanding the provisions of N.J.S.54A:2-1, the
17 tax due for each taxable year from a nonresident taxpayer shall
18 be equal to the tax computed pursuant to N.J.S.54A:2-1 as if such
19 nonresident were a resident, multiplied by a fraction, the
20 numerator of which is the taxpayer's income from sources within
21 this State determined in accordance with the provisions of
22 N.J.S.54A:5-7 and N.J.S.54A:5-8 and the denominator of which is
23 that taxpayer's gross income for the taxable year as if such
24 taxpayer were a resident.

25 b. For a taxable year to which a certification pursuant to
26 section 3 of P.L.1993, c.*** (C.) (now pending before the
27 Legislature as this bill) ¹[does not apply] applies¹, the income of
28 a nonresident individual shall be that part of the individual's
29 income derived from sources within this State as defined in
30 N.J.S.54A:1-1 et seq., except that income of a nonresident
31 individual shall not include income derived from sources within
32 this State from pensions and annuities as set forth in subsection j.
33 of N.J.S.54A:5-1.

34 (cf: P.L.1993, c.178, s.4)

35 3. (New section) The Attorney General shall review the
36 enactments of the State of New York to determine if the method
37 of taxation of the income from New York sources of taxpayers
38 that are not residents of New York, enacted pursuant to 1987
39 N.Y. Laws 28, compiled as subsection (e) of N.Y. Tax 601, and
40 requiring that every New York nonresident taxpayer compute a
41 tax as if such resident were a resident and multiply that liability
42 by a fraction the numerator of which is the taxpayer's New York
43 source income as therein determined and the denominator of
44 which is the taxpayer's federal adjusted gross income for the
45 taxable year, has been repealed or superceded by subsequent
46 enactment so as restrict the computation of liability owed to
47 New York to a method based only on the New York source income
48 of the taxpayer. If the Attorney General shall so determine, the
49 Attorney General shall, not later than 5 days after such
50 enactment, certify to the Director of the Division of Taxation
51 the taxable years for which the fractional method of liability
52 calculation for nonresident taxpayers has been repealed or
53 superceded.

54 4. This act shall take effect immediately but remain

1 inoperative until enactment of P.L.1993, c.*** (now pending
2 before the Legislature as Assembly Committee Substitute for
3 Assembly, Nos. 1071, 2060, and 886 of 1992)).

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8 Suspends requirement that nonresident payers of gross income tax
9 compute prorated liability as though residents if New York State
10 eliminates that requirement for its nonresident personal income
11 tax payers.

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2 superceded.

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STATEMENT

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11 This bill changes the method by which nonresident taxpayers
12 will determine their New Jersey gross income tax on their New
13 Jersey source income if New York State changes the method by
14 which its nonresident taxpayers determine their New York
15 personal income tax liability. Residents of either state with
16 income from sources in the other state compute their nonresident
17 tax liability as if they were residents of the nonresident state,
18 upon all income from whatever source, and then prorate that
19 liability by the ratio of their taxing state source income to all
20 their taxable income as if a taxing state resident.

21 This method of determining a nonresident's tax liability was
22 first adopted by New York in 1987. The sponsor of this bill
23 anticipates that New Jersey will have to adopt the same method
24 to achieve tax parity. However, in all fairness nonresident
25 taxpayers should only be taxed at a rate based on money actually
26 earned in the taxing state. This bill will automatically return the
27 nonresident taxpayer liability determination method expected to
28 be adopted by this State to a rate based only on income actually
29 earned in this State if New York abandons its unfair method of
30 taxing New Jersey residents.

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35 Suspends requirement that nonresident payers of gross income tax
36 compute prorated liability as though residents if New York State
37 eliminates that requirement for its nonresident personal income
38 tax payers.

ASSEMBLY APPROPRIATIONS COMMITTEE

STATEMENT TO

SENATE, No. 1589

STATE OF NEW JERSEY

DATED: MAY 6, 1993

The Assembly Appropriations Committee reports favorably Senate Bill No. 1589.

Senate Bill No. 1589 concerns the method by which nonresident taxpayers are to determine their New Jersey gross income tax on their New Jersey source income.

If pending legislation (Assembly Committee Substitute for Assembly Bill Nos. 1071, 2060 and 886 (1R) of 1992) is enacted into law, nonresident taxpayers will compute their New Jersey gross income tax pursuant to the method currently required by the State of New York for New York gross income tax. A nonresident taxpayer with New Jersey source income would first compute tax as if a State resident, and then prorate that liability by the ratio of New Jersey source income to all taxable income. This method of determining the income tax liability of nonresident taxpayers is the same as the method used under several other states' individual income tax laws, including New York. This method of determining a nonresident's tax liability was first adopted by New York in 1987.

This bill will automatically return the nonresident taxpayer liability determination method expected to be adopted by this State when Assembly Committee Substitute for Assembly Bill Nos. 1071, 2060 and 886 (1R) of 1992 becomes law to a rate based only on income actually earned in this State if New York abandons its method of taxing New Jersey residents with New York source income. If signed into law, this bill would not become operative until the Assembly Committee Substitute for Assembly Bill Nos. 1071, 2060 and 886 (1R) of 1992 is enacted into law.

This bill is identical to Assembly Bill No. 2410.

FISCAL IMPACT:

Because this bill becomes operative only if the Assembly Committee Substitute for Assembly Bill Nos. 1071, 2060 and 886 (1R) of 1992 becomes law and only if New York repeals its current law on the taxation of nonresidents, the fiscal impact of this bill will decrease annual income tax revenues by the same amount that those revenues increase as a result of the enactment of the Assembly Committee Substitute for Assembly Bill Nos. 1071, 2060 and 886 (1R) of 1992.

In testimony before the Senate Budget and Appropriations Committee on Assembly Committee Substitute for Assembly Bill Nos. 1071, 2060 and 886 [1R] of 1992, the Division of Taxation estimated that enactment of the substitute could increase revenue for FY 1994 by approximately \$27 million.

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

SENATE, No. 1589

STATE OF NEW JERSEY

DATED: MARCH 11, 1993

The Senate Budget and Appropriations Committee reports favorably Senate Bill No. 1589.

Senate Bill No. 1589 concerns the method by which nonresident taxpayers are to determine their New Jersey gross income tax on their New Jersey source income.

If pending legislation (Assembly Committee Substitute for Assembly Bill Nos. 1071, 2060 and 886 [1R] of 1992) is enacted into law, nonresident taxpayers would compute their New Jersey gross income tax pursuant to the method currently required by the State of New York for New York gross income tax. A nonresident taxpayer with New Jersey source income would first compute tax as if a State resident, and then prorate that liability by the ratio of New Jersey source income to all taxable income. This method of determining the income tax liability of nonresident taxpayers is the same as the method used under several other states' individual income tax laws, including New York. This method of determining a nonresident's tax liability was first adopted by New York in 1987. The sponsor of this bill anticipates that Assembly Committee Substitute for Assembly Bill Nos. 1071, 2060 and 886 [1R] of 1992 will become law and New Jersey will achieve tax parity with other states.

According to the sponsor, however, nonresident taxpayers should only be taxed at a rate based on money actually earned in the taxing state. This bill will return the nonresident taxpayer liability determination method expected to be adopted by this State when Assembly Committee Substitute for Assembly Bill Nos. 1071, 2060 and 886 [1R] of 1992 becomes law to a rate based only on income actually earned in this State if New York abandons its method of taxing New Jersey residents with New York source income.

If signed into law, this bill would not become operative until the Assembly Committee Substitute for Assembly Bill Nos. 1071, 2060 and 886 [1R] of 1992 is enacted into law.

FISCAL IMPACT

Because this bill becomes operative only if the Assembly Committee Substitute for Assembly Bill Nos. 1071, 2060 and 886 [1R] of 1992 becomes law and only if New York repeals its current law on the taxation of nonresidents, the fiscal impact of this bill will decrease annual income tax revenues by the same amount that those revenues increase as a result of the enactment of the Assembly Committee Substitute for Assembly Bill Nos. 1071, 2060 and 886 [1R] of 1992.

In testimony before the Senate Budget and Appropriations Committee on Assembly Committee Substitute for Assembly Bill Nos. 1071, 2060 and 886 [1R] of 1992, the Division of Taxation estimated that enactment of the substitute could increase revenue for FY 1994 by approximately \$27 million.

LEGISLATIVE FISCAL ESTIMATE TO

SENATE, No. 1589

STATE OF NEW JERSEY

DATED: June 10, 1993

Senate Bill No. 1589 of 1992 provides a procedure to change the method set forth in Assembly Bill Nos. 1071, 2060 and 886 ACS (2R) of 1992 for determining the New Jersey gross income tax liability of nonresident taxpayers.

If Assembly Bill Nos. 1071, 2060 and 886 ACS (2R) of 1992 is enacted, a nonresident of this State with New Jersey source income would first compute the appropriate tax as if the nonresident was a State resident, upon all income from whatever source. The nonresident taxpayer would then prorate the tax liability by the ratio of New Jersey source income to all taxable income. Under current law (N.J.S.54A:5-5), a nonresident taxpayer calculates New Jersey gross income tax liability only on money actually earned in this State.

The method of computing New Jersey gross income tax for nonresident taxpayers set forth in Assembly Bill Nos. 1071, 2060 and 886 ACS (2R) of 1992 is identical to the current method required of nonresident taxpayers by the State of New York for New York gross income tax purposes.

Senate Bill 1589 would change the nonresident taxpayer liability determination method which would be adopted by this State if Assembly Bill Nos. 1071, 2060 and 886 ACS (2R) of 1992 is enacted by restoring the method currently set forth in N.J.S.54A:5-5. The current method would be restored if New York repeals or supercedes its method of taxing nonresidents and the Attorney General of this State certifies this change in New York law to the Division of Taxation.

Because this bill becomes operative only if Assembly Bill Nos. 1071, 2060 and 886 ACS (2R) of 1992 becomes law and only if New York repeals or supercedes its current law on the taxation of nonresidents, the fiscal impact of this bill will decrease annual income tax revenues by the same amount that those revenues increase as a result of the enactment of Assembly Bill Nos. 1071, 2060 and 886 ACS (2R) of 1992.

In a fiscal estimate on Assembly Bill Nos. 1071, 2060 and 886 ACS of 1992 prepared by the Office of Legislative Services (OLS), OLS noted that without specific data concerning the New Jersey source and total income of nonresident taxpayers it is not possible to determine the expected revenue increase to the State. However, in testimony before the Senate Budget and Appropriations Committee, the Division of Taxation estimated that the enactment of Assembly Bill Nos. 1071, 2060 and 886 ACS of 1992 could increase revenue for Fiscal Year 1994 by approximately \$27 million. OLS stated in that fiscal estimate that it has no information that would lead it to dispute the Division of Taxation's estimate. (Assembly Bill Nos. 1071, 2060 and 886 ACS of 1992 was amended twice following the preparation of the fiscal estimate; however, the amendments only concerned the effective date of the bill, not any of its substantive provisions.)

Therefore, OLS notes that the impact of Senate Bill 1589 also cannot be determined since the expected revenue increase to the State from the enactment of Assembly Bill Nos. 1071, 2060 and 886 ACS (2R) of 1992 cannot be determined. In addition, there is no way to ascertain when or if New York State will make the requisite change to New York law, so the fiscal year in which a decrease in income tax revenues would occur pursuant to Senate Bill 1589 cannot be anticipated.

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.