LEGISLATIVE FISCAL ESTIMATE

[First Reprint]

SENATE, No. 3128

STATE OF NEW JERSEY
220th LEGISLATURE

DATED: DECEMBER 19, 2022

SUMMARY

Synopsis: Concerns tax treatment of individual's income earned outside state of residence; appropriates $25,000,000.

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

Fiscal Impact	**FY 2024 and Annually Thereafter**
State Revenue Impact	Indeterminate Net Impact
State Cost Increase	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.

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– OLS –

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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 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 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.

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 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.

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 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 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 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 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 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 judgment 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 for 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 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 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 the 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 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*
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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.).