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

Fiscal Impact	FY 2024 & Annually Thereafter
State Revenue Impact	Indeterminate Net Impact
State Cost Increase	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 whole 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.).