

**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.

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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.