

[Third Reprint]

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:

Senators Sarlo, Gill and Singleton

SYNOPSIS

Concerns tax treatment of individual's income earned outside state of residence; appropriates \$35 million.

CURRENT VERSION OF TEXT

As amended by the Senate on June 20, 2023.



(Sponsorship Updated As Of: 6/26/2023)

1 AN ACT concerning taxes paid to other jurisdictions under the gross
 2 income tax, amending N.J.S.54A:4-1 ²[and],² N.J.S.54A:5-8,
 3 ²and N.J.S.54A:9-17,² 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
 33 subdivision thereof than he is finally required to pay, the taxpayer
 34 shall send notice of the difference to the director who shall
 35 redetermine the tax for any years affected regardless of any
 36 otherwise applicable statute of limitations. A taxpayer may readjust
 37 the credit under this subsection when another state changes or
 38 corrects income reportable there either within the limitation period
 39 prescribed in N.J.S.54A:9-8 or within one year after the date the
 40 taxpayer received notification that the other state's income tax was
 41 due, whichever of such periods expires later. The division shall not
 42 allow a credit or refund unless the taxpayer files a claim within such
 43 period.

44 (f) A resident taxpayer shall be allowed a credit against the tax
 45 otherwise due under this act for the amount of any tax that the

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:

¹Senate SBA committee amendments adopted December 5, 2022.

²Senate floor amendments adopted December 19, 2022.

³Senate floor amendments adopted June 20, 2023.

1 director determines is substantially similar to the tax imposed
2 pursuant to section 3 of P.L.2019, c.320 (C.54A:12-3), for the
3 taxable year, by another state of the United States or political
4 subdivision of such state, or by the District of Columbia, with
5 respect to the direct and indirect distributive proceeds from a pass-
6 through entity, which distributive proceeds are also subject to tax
7 under this act. A credit allowed pursuant to this subsection shall not
8 exceed what would have been allowed if the income was taxed at
9 the individual level and not taxed at the entity level.

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

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

14

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

16 54A:5-8. a. Income from sources within this State for a
17 nonresident individual, estate or trust means the income from the
18 categories of gross income enumerated and classified under chapter
19 5 of this act to the extent that it is earned, received or acquired from
20 sources within this State:

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

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

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

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

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

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

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

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

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

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

19 (2) As used in this subsection:

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

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

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

26 (c) arranging financing with respect to acquiring specified
27 assets; or

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

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

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

45 (3) This subsection shall remain inoperative until enactment into
46 law by the states of Connecticut, New York, and Massachusetts of
47 legislation having an identical effect with this subsection, sections 7
48 and 9 of P.L.2018, c.45 (C.54A:5-16 and C.54:10A-6.4), and

1 subsection (D) of section 6 of P.L.1945, c.162 (C.54:10A-6), as
 2 shall be determined by the Director of the Division of Taxation in
 3 the Department of the Treasury.

4 e. ¹["If an employee's state of residence uses a "convenience of
 5 the employer" test when determining the source of income of a
 6 nonresident, income or wages earned by a nonresident are allocated
 7 to the employer's location, unless the nonresident works from an
 8 out-of-state location due to the necessity of the employer, rather
 9 than the convenience of the employee.]" For an individual who is a
 10 nonresident of this State and who has income from employee
 11 compensation from a New Jersey employer for the performance of
 12 personal services performed outside of New Jersey³[" but that
 13 location for the performance of the personal services is not
 14 necessitated by the employer]" that were not required by the
 15 employer to be performed outside of New Jersey³, and whose state
 16 of residence imposes an income or wage tax that requires employee
 17 compensation³to³ be sourced to an employer's location if³[a] the³
 18 nonresident³[of that state]"³ renders the personal services³[as an
 19 employee]"³ from an out-of-state location for the convenience of the
 20 nonresident³ employee and not due to the necessity of the
 21 employer, that same sourcing rule shall apply to that income of³[a]
 22 the³ nonresident³[of this State who is rendering personal services
 23 for an employer located in this State]"³ .¹

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

25

26 3. (New section) a. For taxable years beginning on and after
 27 January 1, 2020 but before January 1, 2024, a resident taxpayer
 28 who:

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

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

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

41 (4) obtains a final judgement from the tax court or tribunal
 42 resulting in the resident taxpayer being refunded taxes paid to
 43 another state or jurisdiction on income derived from services
 44 rendered while the resident taxpayer was within New Jersey shall be
 45 allowed a credit against the tax otherwise due for the taxable year
 46 under the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et
 47 seq., in amount equal to 50 percent of the amount of taxes that are

1 ¹[refunded by such tax court or tribunal and allocated to this State]
 2 owed to the State of New Jersey as a result of the readjustment of
 3 the credit for tax of another state pursuant to subsection (e) of
 4 N.J.S.54A:4-1¹.

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

10

11 ³¹4. (New section) a. As used in this section:

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

14 "Qualified taxpayer" means a taxpayer who is a New Jersey
 15 resident and whose employer has assigned that individual a work
 16 location outside of the State, who seeks from the employer and
 17 accepts a permanent reassignment of work location to a New Jersey
 18 location during the taxable year. A qualified taxpayer does not
 19 include an individual who received a credit pursuant to this section
 20 in a prior taxable year.

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

24 c. The authority shall determine the taxpayer's eligibility for a
 25 tax credit, and shall issue a certification awarding the tax credit to
 26 the taxpayer. The value of tax credits approved by the authority
 27 pursuant to this section shall not exceed a total of \$10,000,000 in
 28 any fiscal year. Certifications awarding tax credits shall be
 29 provided to applicants in the order in which the authority receives
 30 the applications.

31 d. The Director of the Division of Taxation in the Department
 32 of the Treasury shall prescribe the order of priority of the
 33 application of the credit allowed under this section and any other
 34 credits allowed by law against the tax otherwise due for the taxable
 35 year under N.J.S.54A:1-1 et seq. The amount of the credit applied
 36 under this section against the tax imposed under N.J.S.54A:1-1 et
 37 seq. for the taxable year, together with any other credits allowed by
 38 law, shall not reduce the tax liability to an amount less than zero.¹³

39

40 ¹[4.] ³[5.] ¹4.³ (New section) a. There is established a pilot
 41 program, to be administered by the New Jersey Economic
 42 Development Authority, through which the authority shall provide
 43 grants to businesses to assign their employees, who are New Jersey
 44 residents assigned to locations outside of the State, to New Jersey
 45 locations. A business shall be eligible for a grant under the pilot
 46 program if the business has 25 or more full time employees and is
 47 ¹[legally domiciled] principally located¹ in another state.

1 b. A business seeking a grant pursuant to this section shall
 2 submit an application for approval to the authority ³on or before
 3 July 1, 2028,³ in the form and manner prescribed by the chief
 4 executive officer of the authority. Following approval of an
 5 application, but before the disbursement of grant funds, the
 6 authority shall require the business to enter into a grant agreement.
 7 The grant agreement shall, at a minimum, specify the amount of the
 8 grant to be awarded to the business ³[and],³ the minimum number
 9 of resident employees the business shall assign to the State ³, and, if
 10 applicable, the terms governing actions proposed to be undertaken
 11 by the business for the purpose of receiving the preference
 12 authorized by subsection c. of this section³. If the authority
 13 determines that the business made a material misrepresentation on
 14 the business's grant application or if the business fails to comply
 15 with any requirement set forth in the grant agreement, then the
 16 business shall return to the authority any grant awarded pursuant to
 17 this section.

18 c. The value of the grant shall be the ³[net revenue realized by
 19 the State through]³ New Jersey Gross Income Tax ³[paid by]
 20 withholdings of³ resident employees re-assigned by the business to
 21 a New Jersey location ¹, as certified by the Director of the Division
 22 of Taxation,¹ or ³[\$100,000] \$500,000³, whichever is less. In
 23 awarding the grants made available by this section, the authority
 24 may establish a preference for businesses that ³;³ acquire or lease
 25 office space in this State and make a capital investment in such
 26 office space³; submit to the authority a plan showing that the
 27 business will provide bonuses to, or otherwise increase the
 28 compensation of, employees relocating to the State; or both³. The
 29 sum of all grants awarded pursuant to this section shall not exceed
 30 ¹[\$10,000,000] ³[\$25,000,000¹] \$35,000,000³ in any State fiscal
 31 year.

32 As used in this subsection, "capital investment" means expenses
 33 that the business incurs, or are incurred on behalf of the business by
 34 its landlord, for construction, repair, renovation, improvement,
 35 equipping, or furnishing of a building or structure acquired or
 36 leased by the business and used in connection with the operation of
 37 the business.

38
 39 ¹[5.] ³[6.1] 5.³ Notwithstanding the provisions of the
 40 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.),
 41 to the contrary, the Director of the Division of Taxation in the
 42 Department of the Treasury may adopt, immediately upon filing with
 43 the Office of Administrative Law, regulations that the director deems
 44 necessary to implement the provisions of sections 1 through ¹[3]
 45 ³[4¹] 3³ of ¹[this act] P.L. , c. (C.) (pending before the
 46 Legislature as this bill)¹, which regulations shall be effective for a

1 period not to exceed 180 days from the date of the filing. The director
2 shall thereafter amend, adopt, or readopt the regulations in accordance
3 with the requirements of P.L.1968, c.410 (C.52:14B-1 et seq.).
4

5 ¹~~6.~~ ³~~7.~~ ¹~~6.~~ ³ There is appropriated from the General Fund to
6 the New Jersey Economic Development Authority the sum of
7 ¹~~10,000,000~~ ³~~25,000,000~~ ¹~~35,000,000~~ ³, subject to the
8 approval of the Director of Budget and Accounting ¹~~in the Department~~
9 ~~of the Treasury~~ ¹, for the grants authorized pursuant to section ¹~~4~~
10 ³~~5~~ ¹~~4~~ ³ of ¹~~this act~~ P.L. , c. (C) (pending before the
11 Legislature as this bill) ¹.

12
13 ³~~8.~~ ¹~~7.~~ ³ N.J.S.54A:9-17 is amended to read as follows:

14 N.J.S.54A:9-17 (a) General. The director shall administer and
15 enforce the tax imposed by this act and is authorized to make such
16 rules and regulations, and to require such facts and information to
17 be reported as he may deem necessary to enforce the provisions of
18 this act. The director may divide the State into districts in each of
19 which a branch office may be maintained by him, but in no case
20 shall a county be divided in forming a district.

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

27 (c) Examination of books and witnesses. The director for the
28 purpose of ascertaining the correctness of any return, or for the
29 purpose of making an estimate of taxable income of any person,
30 shall have power to examine or to cause to have examined, by any
31 agent or representative designated by him for that purpose, any
32 books, papers, records or memoranda bearing upon the matters
33 required to be included in the return, and may require the
34 attendance of the person rendering the return or any officer or
35 employee of such person, or the attendance of any other person
36 having knowledge in the premises, and may take testimony and
37 require proof material for his information, with power to administer
38 oaths to such person or persons.

39 (d) Abatement authority. The director, on his own motion, may
40 abate any small unpaid balance of an assessment of income tax, or
41 any liability in respect thereof, if the director determines under
42 uniform rules prescribed by him that the administration and
43 collection costs involved would not warrant collection of the
44 amount due. He may also abate, on his own motion, the unpaid
45 portion of the assessment of any tax or any liability in respect
46 thereof, which is excessive in amount, or is assessed after the
47 expiration of the period of limitation properly applicable thereto, or

1 is erroneously or illegally assessed. No claim for abatement under
2 this subsection shall be filed by a taxpayer.

3 (e) The Department of the Treasury, Division of Taxation, may
4 enter into an agreement with the taxing authorities of any state
5 which imposes a tax on or is measured by income to provide that
6 compensation paid in such state to residents of this State shall be
7 exempt from such tax; in such case any compensation paid in this
8 State to residents of such state shall be exempt from New Jersey
9 personal income tax. The Division of Taxation, in such agreements,
10 may provide for reciprocal withholding, employer liability,
11 exchange of information and all other matters relating to
12 cooperation between the states. The provisions of subsection (e) of
13 N.J.S.54A:4-1 and subsection e. of N.J.S.54A:5-8 shall not affect
14 any agreement entered into by the Division of Taxation and the
15 taxing authorities of another state pursuant to this subsection.²

16 (cf: N.J.S.54A:9-17)

17

18 ¹[7.] ²[8.1] ³[9.2] 8.³ This act shall take effect immediately,
19 except that section 2 shall first apply to taxable years beginning on
20 or after January 1, 2023.