

[Fourth Reprint]

**SENATE, No. 3128**

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**STATE OF NEW JERSEY**  
**220th LEGISLATURE**

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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 26, 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 <sup>2</sup>[and],<sup>2</sup> N.J.S.54A:5-8,  
3 <sup>2</sup>and N.J.S.54A:9-17,<sup>2</sup> 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.

**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:

<sup>1</sup>Senate SBA committee amendments adopted December 5, 2022.

<sup>2</sup>Senate floor amendments adopted December 19, 2022.

<sup>3</sup>Senate floor amendments adopted June 20, 2023.

<sup>4</sup>Senate floor amendments adopted June 26, 2023.

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

12 For purposes of this subsection, "distributive proceeds" and  
13 "pass-through entity" mean the same as those terms are used in  
14 section 2 of P.L.2019, c.320 (C.54A:12-2).  
15 (cf: P.L.2019, c.320, s.8)

16  
17 2. N.J.S.54A:5-8 is amended to read as follows:

18 54A:5-8. a. Income from sources within this State for a  
19 nonresident individual, estate or trust means the income from the  
20 categories of gross income enumerated and classified under chapter  
21 5 of this act to the extent that it is earned, received or acquired from  
22 sources within this State:

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

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

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

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

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

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

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

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

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

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

21 (2) As used in this subsection:

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

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

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

28 (c) arranging financing with respect to acquiring specified  
29 assets; or

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

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

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

47 (3) This subsection shall remain inoperative until enactment into  
48 law by the states of Connecticut, New York, and Massachusetts of

1 legislation having an identical effect with this subsection, sections 7  
2 and 9 of P.L.2018, c.45 (C.54A:5-16 and C.54:10A-6.4), and  
3 subsection (D) of section 6 of P.L.1945, c.162 (C.54:10A-6), as  
4 shall be determined by the Director of the Division of Taxation in  
5 the Department of the Treasury.

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

27 <sup>4</sup>f. Notwithstanding the provisions of the "Administrative  
28 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), to the  
29 contrary, the Director of the Division of Taxation in the Department  
30 of the Treasury may adopt, immediately upon filing with the Office  
31 of Administrative Law, regulations that the director deems  
32 necessary to implement the provisions of this section, which  
33 regulations shall be effective for a period not to exceed 180 from  
34 the date of filing. The director shall thereafter amend, adopt, or  
35 readopt the regulations in accordance with the requirements of  
36 P.L.1968, c.410 (C.52:14B-1 et seq.). <sup>4</sup>

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

38  
39 3. (New section) a. For taxable years beginning on and after  
40 January 1, 2020 but before January 1, 2024, a resident taxpayer  
41 who:

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

45 (2) applies for and is denied a refund from such state or  
46 jurisdiction for taxes paid to that state or jurisdiction on income

1 derived from services rendered while the resident taxpayer was  
2 within New Jersey;

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

8 (4) obtains a final judgement from the tax court or tribunal  
9 resulting in the resident taxpayer being refunded taxes paid to  
10 another state or jurisdiction on income derived from services  
11 rendered while the resident taxpayer was within New Jersey shall be  
12 allowed a credit against the tax otherwise due for the taxable year  
13 under the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et  
14 seq., in amount equal to 50 percent of the amount of taxes that are  
15 <sup>1</sup>[refunded by such tax court or tribunal and allocated to this State]  
16 owed to the State of New Jersey as a result of the readjustment of  
17 the credit for tax of another state pursuant to subsection (e) of  
18 N.J.S.54A:4-1<sup>1</sup>.

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

24  
25 <sup>3</sup>[<sup>1</sup>4. (New section) a. As used in this section:

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

28 "Qualified taxpayer" means a taxpayer who is a New Jersey  
29 resident and whose employer has assigned that individual a work  
30 location outside of the State, who seeks from the employer and  
31 accepts a permanent reassignment of work location to a New Jersey  
32 location during the taxable year. A qualified taxpayer does not  
33 include an individual who received a credit pursuant to this section  
34 in a prior taxable year.

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

38 c. The authority shall determine the taxpayer's eligibility for a  
39 tax credit, and shall issue a certification awarding the tax credit to  
40 the taxpayer. The value of tax credits approved by the authority  
41 pursuant to this section shall not exceed a total of \$10,000,000 in  
42 any fiscal year. Certifications awarding tax credits shall be  
43 provided to applicants in the order in which the authority receives  
44 the applications.

45 d. The Director of the Division of Taxation in the Department  
46 of the Treasury shall prescribe the order of priority of the  
47 application of the credit allowed under this section and any other  
48 credits allowed by law against the tax otherwise due for the taxable

1 year under N.J.S.54A:1-1 et seq. The amount of the credit applied  
 2 under this section against the tax imposed under N.J.S.54A:1-1 et  
 3 seq. for the taxable year, together with any other credits allowed by  
 4 law, shall not reduce the tax liability to an amount less than zero.<sup>1</sup><sup>3</sup>

5  
 6 <sup>1</sup>~~[4.]~~ <sup>3</sup>~~[5.1]~~ <sup>4</sup>~~4.~~<sup>3</sup> (New section) a. There is established a pilot  
 7 program, to be administered by the New Jersey Economic  
 8 Development Authority, through which the authority shall provide  
 9 grants to businesses to assign their employees, who are New Jersey  
 10 residents assigned to locations outside of the State, to New Jersey  
 11 locations. A business shall be eligible for a grant under the pilot  
 12 program if the business has 25 or more full time employees and is  
 13 <sup>1</sup>~~[legally domiciled]~~ principally located<sup>1</sup> in another state.

14 b. A business seeking a grant pursuant to this section shall  
 15 submit an application for approval to the authority <sup>3</sup>on or before  
 16 July 1, 2028,<sup>3</sup> in the form and manner prescribed by the chief  
 17 executive officer of the authority. Following approval of an  
 18 application, but before the disbursement of grant funds, the  
 19 authority shall require the business to enter into a grant agreement.  
 20 The grant agreement shall, at a minimum, specify the amount of the  
 21 grant to be awarded to the business <sup>3</sup>~~[and]~~ <sup>3</sup>~~,~~ <sup>3</sup> the minimum number  
 22 of resident employees the business shall assign to the State <sup>3</sup>~~,~~ and, if  
 23 applicable, the terms governing actions proposed to be undertaken  
 24 by the business for the purpose of receiving the preference  
 25 authorized by subsection c. of this section<sup>3</sup>. If the authority  
 26 determines that the business made a material misrepresentation on  
 27 the business's grant application or if the business fails to comply  
 28 with any requirement set forth in the grant agreement, then the  
 29 business shall return to the authority any grant awarded pursuant to  
 30 this section.

31 c. The value of the grant shall be the <sup>3</sup>~~[net revenue realized by~~  
 32 ~~the State through]~~<sup>3</sup> New Jersey Gross Income Tax <sup>3</sup>~~[paid by]~~  
 33 withholdings of<sup>3</sup> resident employees re-assigned by the business to  
 34 a New Jersey location <sup>1</sup>~~,~~ as certified by the Director of the Division  
 35 of Taxation,<sup>1</sup> or <sup>3</sup>~~[\$100,000]~~ \$500,000<sup>3</sup>, whichever is less. In  
 36 awarding the grants made available by this section, the authority  
 37 may establish a preference for businesses that <sup>3</sup>~~,~~ <sup>3</sup> acquire or lease  
 38 office space in this State and make a capital investment in such  
 39 office space <sup>3</sup>~~,~~ submit to the authority a plan showing that the  
 40 business will provide bonuses to, or otherwise increase the  
 41 compensation of, employees relocating to the State; or both<sup>3</sup>. The  
 42 sum of all grants awarded pursuant to this section shall not exceed  
 43 <sup>1</sup>~~[\$10,000,000]~~ <sup>3</sup>~~[\$25,000,000]~~ \$35,000,000<sup>3</sup> in any State fiscal  
 44 year.

45 As used in this subsection, "capital investment" means expenses  
 46 that the business incurs, or are incurred on behalf of the business by

1 its landlord, for construction, repair, renovation, improvement,  
 2 equipping, or furnishing of a building or structure acquired or  
 3 leased by the business and used in connection with the operation of  
 4 the business.

5  
 6 <sup>1</sup>[5.] <sup>3</sup>[6.1] <sup>5.</sup> Notwithstanding the provisions of the  
 7 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.),  
 8 to the contrary, the Director of the Division of Taxation in the  
 9 Department of the Treasury may adopt, immediately upon filing with  
 10 the Office of Administrative Law, regulations that the director deems  
 11 necessary to implement the provisions of sections 1 through <sup>1</sup>[3]  
 12 <sup>3</sup>[4<sup>1</sup>] <sup>3</sup> of <sup>1</sup>[this act] P.L. , c. (C. ) (pending before the  
 13 Legislature as this bill)<sup>1</sup>, which regulations shall be effective for a  
 14 period not to exceed 180 days from the date of the filing. The director  
 15 shall thereafter amend, adopt, or readopt the regulations in accordance  
 16 with the requirements of P.L.1968, c.410 (C.52:14B-1 et seq.).

17  
 18 <sup>1</sup>[6.] <sup>3</sup>[7.1] <sup>6.</sup> There is appropriated from the General Fund to  
 19 the New Jersey Economic Development Authority the sum of  
 20 <sup>1</sup>[\$10,000,000] <sup>3</sup>[\$25,000,000<sup>1</sup>] \$35,000,000<sup>3</sup>, subject to the  
 21 approval of the Director of Budget and Accounting <sup>1</sup>in the Department  
 22 of the Treasury<sup>1</sup>, for the grants authorized pursuant to section <sup>1</sup>[4]  
 23 <sup>3</sup>[5<sup>1</sup>] <sup>4</sup> of <sup>1</sup>[this act] P.L. , c. (C ) (pending before the  
 24 Legislature as this bill)<sup>1</sup>.

25  
 26 <sup>3</sup>[28.] <sup>7.</sup> N.J.S.54A:9-17 is amended to read as follows:  
 27 N.J.S.54A:9-17 (a) General. The director shall administer and  
 28 enforce the tax imposed by this act and is authorized to make such  
 29 rules and regulations, and to require such facts and information to  
 30 be reported as he may deem necessary to enforce the provisions of  
 31 this act. The director may divide the State into districts in each of  
 32 which a branch office may be maintained by him, but in no case  
 33 shall a county be divided in forming a district.

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

40 (c) Examination of books and witnesses. The director for the  
 41 purpose of ascertaining the correctness of any return, or for the  
 42 purpose of making an estimate of taxable income of any person,  
 43 shall have power to examine or to cause to have examined, by any  
 44 agent or representative designated by him for that purpose, any  
 45 books, papers, records or memoranda bearing upon the matters  
 46 required to be included in the return, and may require the  
 47 attendance of the person rendering the return or any officer or



1 employee of such person, or the attendance of any other person  
2 having knowledge in the premises, and may take testimony and  
3 require proof material for his information, with power to administer  
4 oaths to such person or persons.

5 (d) Abatement authority. The director, on his own motion, may  
6 abate any small unpaid balance of an assessment of income tax, or  
7 any liability in respect thereof, if the director determines under  
8 uniform rules prescribed by him that the administration and  
9 collection costs involved would not warrant collection of the  
10 amount due. He may also abate, on his own motion, the unpaid  
11 portion of the assessment of any tax or any liability in respect  
12 thereof, which is excessive in amount, or is assessed after the  
13 expiration of the period of limitation properly applicable thereto, or  
14 is erroneously or illegally assessed. No claim for abatement under  
15 this subsection shall be filed by a taxpayer.

16 (e) The Department of the Treasury, Division of Taxation, may  
17 enter into an agreement with the taxing authorities of any state  
18 which imposes a tax on or is measured by income to provide that  
19 compensation paid in such state to residents of this State shall be  
20 exempt from such tax; in such case any compensation paid in this  
21 State to residents of such state shall be exempt from New Jersey  
22 personal income tax. The Division of Taxation, in such agreements,  
23 may provide for reciprocal withholding, employer liability,  
24 exchange of information and all other matters relating to  
25 cooperation between the states. The provisions of subsection (e) of  
26 N.J.S.54A:4-1 and subsection e. of N.J.S.54A:5-8 shall not affect  
27 any agreement entered into by the Division of Taxation and the  
28 taxing authorities of another state pursuant to this subsection.<sup>2</sup>

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

30

31 <sup>1</sup>[7.] <sup>2</sup>[8.1] <sup>3</sup>[9.2] 8.<sup>3</sup> This act shall take effect immediately,  
32 except that section 2 shall first apply to taxable years beginning on  
33 or after January 1, 2023.