

# SENATE BUDGET AND APPROPRIATIONS COMMITTEE

## STATEMENT TO

### **SENATE, No. 3128**

with committee amendments

# **STATE OF NEW JERSEY**

DATED: DECEMBER 5, 2022

The Senate Budget and Appropriations Committee reports favorably Senate Bill No. 3128, with committee amendments.

This bill, as amended, creates 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, but that location for the performance of the personal services is not necessitated by the employer, and whose state of residence imposes an income or wage tax that requires employee compensation be sourced to an employer's location if a nonresident of that state renders the personal services as an employee from an out-of-state location for the convenience of the employee and not due to the necessity of the employer, that same sourcing rule will apply to that income of a nonresident of this State who is rendering personal services for an employer located in this State.

In addition, the bill establishes a refundable tax credit available to resident taxpayers who: (1) pay any income tax or wage tax imposed for the taxable year by another state of the United States, or political subdivision of such state, or by the District of Columbia; (2) apply for and are denied a refund from such state or jurisdiction for taxes paid to that state or jurisdiction on income derived from services rendered while the resident taxpayer was within New Jersey; (3) file an appeal with a tax court or tribunal through which the resident taxpayer formally protests the denial by another state or jurisdiction of the refund requested by the resident taxpayer for taxes paid on income derived from services rendered while the resident taxpayer was within New Jersey; and (4) obtain a final judgement from the tax court or tribunal resulting in the resident taxpayer being refunded taxes paid to another state or jurisdiction on income derived from services rendered while the resident taxpayer was within New Jersey. Under the bill, as amended, the amount of the tax credit would be equal to 50 percent of the amount of taxes that are owed to the State of New Jersey as a result of the readjustment of the credit for tax of another state pursuant to subsection (e) of N.J.S.54A:4-1.

The bill, as amended, also establishes a nonrefundable tax credit in the amount of \$2,000 for certain qualified taxpayers. As amended, the bill defines “qualified taxpayer” as a taxpayer who is a New Jersey resident and whose employer has assigned that individual a work location outside of the State, who seeks from the employer and accepts a permanent reassignment of work location to a New Jersey location during the taxable year. Under the bill, as amended, a qualified taxpayer does not include an individual who received a credit pursuant to this section in a prior taxable year. The bill, as amended, requires the New Jersey Economic Development Authority to determine the taxpayer’s eligibility for a tax credit, and to issue a certification awarding the tax credit to the taxpayer. The bill, as amended, caps the total value of tax credits approved by the authority at \$10,000,000 in any fiscal year.

In addition, the bill establishes a pilot program, to be administered by the New Jersey Economic Development Authority, through which the authority will provide grants to businesses to assign their New Jersey resident employees to New Jersey locations. Under the bill, as amended, a business is eligible for a grant under the pilot program if the business has 25 or more full time employees and is principally located in another state. As amended, the bill appropriates \$25,000,000 for the purposes of the grant program.

#### COMMITTEE AMENDMENTS:

The committee amended the bill to:

- replace the bill’s language concerning the use of the “convenience of the employer” test with language clarifying 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, but that location for the performance of the personal services is not necessitated by the employer, and whose state of residence imposes an income or wage tax that requires employee compensation be sourced to an employer’s location if a nonresident of that state renders the personal services as an employee from an out-of-state location for the convenience of the employee and not due to the necessity of the employer, that same sourcing rule will apply to that income of a nonresident of this State who is rendering personal services for an employer located in this State;
- revise the amount of the refundable credit allowed under the bill to 50 percent of the amount of taxes that are owed to the State of New Jersey as a result of the readjustment of the credit for tax of another state pursuant to subsection (e) of N.J.S.54A:4-1;
- establish a nonrefundable credit in the amount of \$2,000 for “qualified taxpayers”;

- define “qualified taxpayer” as a taxpayer who is a New Jersey resident and whose employer has assigned that individual a work location outside of the State, who seeks from the employer and accepts a permanent reassignment of work location to a New Jersey location during the taxable year;
- provide that a “qualified taxpayer” does not include an individual who received a nonrefundable credit pursuant to the bill in a prior taxable year;
- cap the value of nonrefundable tax credits approved by the authority pursuant to the bill at \$10,000,000 in any fiscal year;
- revise the “legally domiciled” requirement under the pilot program established by the bill to provide that, to be eligible for a grant under the pilot program, a business is required to have 25 or more employees and be principally located in another state;
- provide that the value of the grant under the pilot program established by the bill will be the net revenue realized by the State through New Jersey Gross Income Tax paid by resident employees re-assigned by the business to a New Jersey location, as certified by the Director of the Division of Taxation, or \$100,000, whichever is less;
- increase the cap on the sum of all grants awarded under the pilot program to \$25,000,000 per State fiscal year;
- increase the amount appropriated from the General Fund to the New Jersey Economic Development Authority to \$25,000,000;
- clarify that the appropriation made under the bill is subject to the approval of the Director of Budget and Accounting in the Department of the Treasury; and
- revise certain internal citations.

FISCAL IMPACT:

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.