ASSEMBLY COMMERCE AND ECONOMIC DEVELOPMENT COMMITTEE

STATEMENT TO

ASSEMBLY, No. 4694

with committee amendments

STATE OF NEW JERSEY

DATED: MAY 18, 2023

The Assembly Commerce and Economic Development Committee reports favorably Assembly Bill No. 4694, with committee amendments.

This bill, as amended, would establish a rule for the taxation on the income of an employee who works for a New Jersey employer but who resides and works outside of New Jersey at the employee's convenience. The bill provides for certain reciprocal treatment for income taxation, so that if another state in which an employee resides imposes tax on the income of an employee who works out-of-state for an in-state employer due to the convenience of the employee, that same rule will apply to a person who works for a New Jersey employer but who resides and works outside of New Jersey at the employee's convenience. This means that if an employee's state of residence determines the source of income of nonresidents by a "convenience of the employer test," and the employee works for a New Jersey employer from a location in the employee's state of residence for the employee's own convenience, then the New Jersey employer would be required to include those days as days worked in New Jersey and withhold income tax accordingly.

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 taxpayers' 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 while the resident taxpayer was within New Jersey. The credit would be equal to 50 percent of the amount of the 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 also establishes a nonrefundable gross income tax credit of $2,000 for individuals who seek from their employer and accept a reassignment from an out-of-State location to an in-State location. The bill caps the amount of tax credits that may be awarded to qualified taxpayers at $10 million per State fiscal year.

Additionally, 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 $25 million and makes an initial one-time appropriation from the General Fund for the grant program.

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.

PROPOSED 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 if the state in which an employee resides imposes tax on the income of an employee who works out-of-state for an in-state employer due to the convenience of the employee, that same rule will apply to a person who works for a New Jersey employer but who resides and works outside of New Jersey at the employee's convenience;
- clarify that the provisions of the bill 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;
- 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 million 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 million per State fiscal year;
- increase the amount appropriated from the General Fund to the New Jersey Economic Development Authority to $25 million;
- 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.