

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

SENATE, No. 2876

with committee amendments

STATE OF NEW JERSEY

DATED: OCTOBER 31, 2022

The Senate Budget and Appropriations Committee reports favorably Senate Bill No. 2876 with committee amendments.

This bill, as amended, makes various changes to the administration of the gross income tax and the corporation business tax by adapting a new federal partnership audit regime, ending COVID-related extensions concerning certain State taxes, and eliminating the requirement to affirmatively elect New Jersey S Corporation status.

As amended and reported by the committee, Senate Bill No. 2876 (1R) is identical to Assembly Bill No. 4295 (2R), which was also reported by the committee on this date.

COMMITTEE AMENDMENTS:

The committee amendments:

- omit section 2 from the bill in its entirety;
- renumber sections 3 through 26 of the bill as sections 2 through 25, and adjust some of the bill's internal citations accordingly;
- end, as of the bill's effective date, the extensions enacted in response to the COVID-19 pandemic for the statute of limitations on tax due and the provisions regarding the State's payment of interest on a taxpayer's overpayment of tax;
- require taxpayers to pay, no later than 180 days after the final determination date, any additional New Jersey Gross Income Tax or New Jersey Corporation Business Tax due with respect to final federal adjustments arising from an audit or other action by the Internal Revenue Service or reported by the taxpayer on a timely filed amended federal income tax return;
- require each direct partner that is taxed under the "New Jersey Gross Income Tax Act" or the Corporation Business Tax Act (1945) to, no later than 180 days after the final determination date, file a Federal Adjustments Report reporting their distributive share of the adjustments reported to them and pay any additional amount of the tax due as if final federal adjustments had been properly reported, plus any penalty and interest due;

- provide that any assessment of tax that was allowed as a result of the extension of the statute of limitations will be voided if made after the bill's effective date;
- provide that an S corporation may elect not to be taxed as a New Jersey S corporation with the consent of 100 percent of the shareholders of the S corporation;
- revise the definition for "New Jersey S corporation" under the gross income tax and the corporation business tax to mean a taxpayer that has made a valid election to be an S corporation for federal tax purposes, and that has not made a valid election to opt out of being taxed as a New Jersey S corporation;
- add a definition for "director" to section 6 of the bill;
- clarify that the "election" referred to in subsection d. of section 20 of the bill is the election to opt out of taxation as a New Jersey S corporation; and
- revise certain provisions concerning the bill's effective date.

FISCAL IMPACT:

The Executive has not published a formal fiscal note, but does anticipate this bill will be revenue neutral.

The Office of Legislative Services (OLS) can neither confirm nor refute the Executive's determination that this bill will likely be revenue neutral. The OLS notes that these provisions are largely meant to ease the administrative burden of the Division of Taxation while also simplifying certain processes for taxpayers. However, there could be underlying effects that reduce costs for the State or capture more revenue.