

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

SENATE, No. 3737

with committee amendments

STATE OF NEW JERSEY

DATED: JUNE 12, 2023

The Senate Budget and Appropriations Committee reports favorably and with committee amendments Senate Bill No. 3737.

As amended and reported by the committee, this bill modifies various provisions of the Corporation Business Tax Act (1945), the "Gross Income Tax Act," and the State Uniform Tax Procedure Law.

Changes to the Corporation Business Tax Act (1945)

The bill's modifications to the Corporation Business Tax Act (1945) include changes to combined reporting, particularly with respect to: certain statutory provisions concerning unitary businesses; the method for calculating the allocation factor of a taxable member of a combined group; the managerial member duration period; the definition of world-wide basis and world-wide group; water's-edge groups and affiliated groups, including the calculation of entire net income for non-U.S. corporations that are members of a water's-edge group or affiliated group; the "captive" versions of investment companies, real estate investment trusts, and regulated investment companies.

The bill also modifies the treatment of certain deductions and carryovers allowed, and certain addbacks required, under the Corporation Business Tax Act (1945), namely: the deductions allowed for net operating losses and prior net operating loss conversion carryovers, the international banking facility deduction, the net deferred liability deduction, the interest deduction limitation and required addback of interest expenses deducted and paid to related members, the deduction for research and experimental expenditures, and the dividend exclusion.

The bill modifies the treatment of global intangible low-taxed income (GILTI) and foreign-derived intangible income (FDII) under the Corporation Business Tax Act (1945) by repealing the deduction currently allowed for GILTI and FDII and by treating GILTI as a dividend subject to the dividend exclusion rules for privilege periods ending on and after July 31, 2023.

The bill adds language clarifying the treatment of the income of non-U.S. corporations that are not members of a world-wide group or a water's-edge group for purposes of the Corporation Business Tax Act (1945).

The bill modifies certain statutory requirements concerning installment payments due under the Corporation Business Tax Act (1945), and changes certain provisions concerning the underpayment of an installment payment.

The bill changes the due date for filing a return under the Corporation Business Tax Act (1945) to: (1) the fifteenth day of the month immediately following the month of the original due date for filing the taxpayer's federal corporate income tax return for the privilege period; or (2) in the case of a taxpayer that received a filing extension for federal tax purposes, the fifteenth day of the month immediately following the month of the extended due date for filing the federal return.

Finally, the bill creates a new section of law under the Corporation Business Tax Act (1945) providing certain criteria for determining whether a corporation has "substantial nexus" with the State and will accordingly be subject to taxation under the act.

Changes to the "New Jersey Gross Income Tax Act"

The bill adds a new section of law to the "New Jersey Gross Income Tax Act" to provide uniform sourcing rules for that act and the Corporation Business Tax Act (1945). Specifically, the bill provides that for taxable years beginning on and after January 1, 2023, a gross income taxpayer's income from a trade, business, partnership, or S corporation will be sourced in a manner consistent with the Corporation Business Tax Act (1945) in certain circumstances. The bill requires any income from salary, wages, tips, fees, commissions, bonuses, and other similar forms of remuneration to be sourced pursuant to the provisions of the "New Jersey Gross Income Tax Act."

Changes to the State Uniform Tax Procedure Law

The bill modifies certain provisions of the State Uniform Tax Procedure Law. First, the bill modifies certain statutory language concerning the late filing penalty and the penalty imposed for failing to file a return electronically. The bill also adds language allowing the director or a taxpayer to make adjustments to net operating losses in privilege periods closed due to the statute of limitations on the assessment of additional taxes. Finally, the bill adds language providing a phase-in for the accrual of any penalties or interest for the underpayment of tax due with respect to any provision of the bill that creates an additional tax liability.

COMMITTEE AMENDMENTS:

The committee amended the bill to: (1) remove the provisions permitting the Director of the Division of Taxation to combine or de-combine taxpayers for purposes of combined reporting; and (2) renumber sections 9 through 15 as sections 8 through 14.

FISCAL IMPACT:

Without access to taxpayer-specific corporation business tax data, the Office of Legislative Services (OLS) lacks the informational basis to either agree or disagree with the Executive assessment that the numerous countervailing effects of the bill would result in approximate

State revenue-neutrality in the long term.

The OLS, however, notes that in the case of the global intangible low-taxed income and foreign-derived intangible income reform, the Executive's estimate falls within the range of plausible outcomes.

The OLS notes that the bill may result in indeterminate State administrative cost savings to the extent that the bill's tax administration simplification strategies will decrease the operating expenses of the Department of the Treasury.

The OLS adds that to the extent that the bill changes corporation business tax collections in any given year, it will also directly affect State expenditures. The reason is that the State Constitution dedicates six percent of annual corporation business tax collections to open space, farmland, and historic preservation, as well as to certain environmental purposes.