

LEGISLATIVE FISCAL ESTIMATE
SENATE, No. 2513
STATE OF NEW JERSEY
219th LEGISLATURE

DATED: MAY 7, 2021

SUMMARY

Synopsis: Provides for “throwback” rule in calculation of CBT allocation factor and makes net deferred tax impact deduction contingent on fiscal analysis.

Type of Impact: Indeterminate recurring annual net State revenue gain.

Agencies Affected: Department of the Treasury.

Office of Legislative Services Estimate

Fiscal Impact	<u>FY 2022 and Thereafter</u>
Net State Revenue Gain	Indeterminate

- The Office of Legislative Services (OLS) notes the magnitude of the impact of the “throwback rule” on corporation business tax (CBT) revenues is highly dependent upon where taxpayers are shipping tangible personal property and whether each taxpayer has sufficient business activity in those states or countries to establish jurisdiction.
- The OLS cannot predict future decision making by the Executive concerning the deduction relative to net deferred tax impact. The OLS does not have access to taxpayer return data, so it cannot determine the impact of this deduction on CBT revenues.
- Assessment, reporting, and public hearing requirements could result in an expenditure increase to the Department of the Treasury for administrative purposes.

BILL DESCRIPTION

This bill revises aspects of assessments and reporting under the CBT. In particular, the bill implements the “throwback rule” to capture certain profits that are not taxed by any state and mandates a fiscal evaluation be performed before a CBT deduction relative to net deferred tax impact becomes available to taxpayers.

The bill amends N.J.S.A.54:10A-6 to include in the sales fraction computation for a CBT taxpayer “sales of [the taxpayer’s] tangible personal property shipped from a location within this

State to a state, possession, or territory of the United States or the District of Columbia, or to any foreign country in which the taxpayer is not subject to a tax on or measured by profits or income, business presence, or business activity.” The purpose of a throwback rule is to capture income that is otherwise not taxable in another jurisdiction because the taxpayer does not have sufficient physical presence in a state or foreign country where the sale of tangible personal property occurs or the state or foreign country does not impose a similar tax on those receipts. Thus, if a throwback rule were enacted, sales would be sourced back to New Jersey.

P.L.2018, c.48 created a CBT deduction relative to the impact of net deferred tax (i.e. the difference between deferred tax liabilities and deferred tax assets of a combined group) arising from the imposition of combined reporting. The bill changes this provision to require the State Treasurer to conduct a general assessment of impact of combined reporting on the net deferred tax liabilities and assets of public traded companies and the potential impact this deduction would have if it were allowed. If the State Treasurer determines, following a public hearing, that the net deferred tax impact deduction should not be available, then the State Treasurer can disallow the deduction.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The OLS does not have access to taxpayer return data that would assist in quantifying the “throwback rule” provision in the bill. However, the Fiscal Year 2019 New Jersey Tax Expenditure Report¹ included an estimate of \$127 million in forgone revenue because of the State not having a throwback rule in place. This information was based on actual tax returns processed by the Division of Taxation from 2007 and 2008. The magnitude of the impact of this rule on CBT revenues is highly dependent upon where taxpayers are shipping tangible personal property and whether each taxpayer has sufficient business activity in those states or countries to establish jurisdiction. To provide some perspective, two states, South Dakota and Wyoming, do not impose a corporate income tax or gross receipts tax.² Four states, Nevada, Ohio, Texas, and Washington, impose gross receipts taxes.³ All other states and most foreign nations with large markets impose some form of a corporate income tax, but the OLS does not have information regarding the taxpayers that ship products from New Jersey to those states.

The impact of the bill’s provision regarding net deferred tax will be dependent on the State Treasurer’s decision on whether or not to allow the deduction. In the event that the deduction is disallowed, the fiscal impact will be highly sensitive to the specific circumstances of a relatively few taxpayers. The OLS does not have access to taxpayer return data, so it cannot determine the impact of this deduction on CBT revenues. Any data that are immediately available would likely be inadequate, since the impact of combined reporting on these companies and any subsequent devaluation continues to evolve. The assessment, reporting, and public hearing requirements could result in an expenditure increase to the Department of the Treasury for administrative purposes.

¹ <https://www.state.nj.us/treasury/taxation/pdf/taxexpenditurereport2018.pdf>

² https://www.taxadmin.org/assets/docs/Research/Rates/corp_inc.pdf

³ <https://taxfoundation.org/state-corporate-rates-brackets-2019/>

Section: Revenue, Finance and Appropriations

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This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).