§§3,5
C.54A:4-1.1
and 54A:4-1.2
§4
C.34:1B-139.4
§6
Approp.
§7
Note to §2

P.L. 2023, CHAPTER 125, ***approved July 21, 2023***
Assembly, No. 4694 ***(Third Reprint)***

AN ACT concerning taxes paid to other jurisdictions under the gross income tax, amending N.J.S.54A:4-1 [1]**[**and**]** ,[1] N.J.S.54A:5-8, [1]and N.J.S.54A:9-17,[1] supplementing Title 54A of the New Jersey Statutes and P.L.1974, c.80 (C.34:1B-1 et seq.), and making an appropriation.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. N.J.S.54A:4-1 is amended to read as follows:

54A:4-1. Resident credit for tax of another state. (a) A resident taxpayer shall be allowed a credit against the tax otherwise due under this act for the amount of 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, with respect to income which is also subject to tax under this act, except as provided by subsections (c) and (d) of this section.

(b) The credit provided under this section shall not exceed the proportion of the tax otherwise due under this act that the amount of the taxpayer's income subject to tax by the other jurisdiction bears to his entire New Jersey income.

(c) No credit shall be allowed against the tax otherwise due under this act for the amount of any income tax or wage tax imposed for the taxable year on S corporation income allocated to this State.

(d) No credit shall be allowed for the amount of any taxes paid or accrued for the taxable year on or measured by profits or income imposed on or paid on behalf of a person other than the taxpayer, whether or not the taxpayer may be held liable for the tax.

(e) Readjustment of the tax of another state or political subdivision thereof--if the taxpayer is allowed credit under this section for more or less of the tax of another state or political

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.
Matter enclosed in superscript numerals has been adopted as follows:
[1]Assembly ACE committee amendments adopted May 18, 2023.
[2]Senate floor amendments adopted June 20, 2023.
[3]Senate floor amendments adopted June 26, 2023.

subdivision thereof than he is finally required to pay, the taxpayer shall send notice of the difference to the director who shall redetermine the tax for any years affected regardless of any otherwise applicable statute of limitations. A taxpayer may readjust the credit under this subsection when another state changes or corrects income reportable there either within the limitation period prescribed in N.J.S.54A:9-8 or within one year after the date the taxpayer received notification that the other state's income tax was due, whichever of such periods expires later. The division shall not allow a credit or refund unless the taxpayer files a claim within such period.

(f) A resident taxpayer shall be allowed a credit against the tax otherwise due under this act for the amount of any tax that the director determines is substantially similar to the tax imposed pursuant to section 3 of P.L.2019, c.320 (C.54A:12-3), for the taxable year, by another state of the United States or political subdivision of such state, or by the District of Columbia, with respect to the direct and indirect distributive proceeds from a pass-through entity, which distributive proceeds are also subject to tax under this act. A credit allowed pursuant to this subsection shall not exceed what would have been allowed if the income was taxed at the individual level and not taxed at the entity level.

For purposes of this subsection, "distributive proceeds" and "pass-through entity" mean the same as those terms are used in section 2 of P.L.2019, c.320 (C.54A:12-2).

(cf: P.L.2019, c.320, s.8)

2. N.J.S.54A:5-8 is amended to read as follows:

54A:5-8. a. Income from sources within this State for a nonresident individual, estate or trust means the income from the categories of gross income enumerated and classified under chapter 5 of this act to the extent that it is earned, received or acquired from sources within this State:

(1) By reason of ownership or disposition of any interest in real or tangible personal property in this State; or

(2) In connection with a trade, profession, occupation carried on in this State or for the rendition of personal services performed in this State; or

(3) As a distributive share of the income of an unincorporated business, profession, enterprise, undertaking or other activity as the result of work done, services rendered or other business activities conducted in this State except as allocated to another state pursuant to regulations promulgated by the director under this act; or

(4) From intangible personal property employed in a trade, profession, occupation or business carried on in this State; or

(5) As a result of any lottery or wagering transaction in this State other than that excluded from taxation pursuant to N.J.S.54A:6-11; or

(6) As S corporation income allocated to this State of a New Jersey S corporation.

b. Income from sources within this State for a nonresident individual shall not include income from pensions and annuities as set forth in subsection j. of N.J.S.54A:5-1.

c. For purposes of paragraphs (2) through (4) of subsection a. of this section, a nonresident taxpayer shall not be deemed to be carrying on a trade, profession, occupation, business, enterprise, undertaking or other activity in this State, or to be rendering personal services in this State, solely as a result of the purchase, holding and sale of intangible personal property by the trade, profession, occupation, business, enterprise or undertaking, to the extent that (1) the activities related to the intangible personal property are for the account of the trade, profession, occupation, business, enterprise, or undertaking and (2) the trade, profession, occupation, business, enterprise, or undertaking does not hold the intangible personal property for sale to customers. For the purposes of this subsection: "intangible personal property" includes, but is not limited to, "commodities", as defined in paragraph (2) of subsection (e), and "securities," as defined in paragraph (2) of subsection (c), of section 475 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.475; and "purchase, holding and sale of intangible personal property" includes activities incidental thereto giving rise to income, including commitment fees, breakup fees, income from securities lending, and any other incidental activities as prescribed or authorized by the director. The director shall adopt such regulations as the director deems necessary to accomplish the purposes of this section.

d. (1) The provisions of subsection c. of this section shall not apply to income from investment management services provided to a partnership, S corporation, or other entity.

(2) As used in this subsection:

"Investment management services" means providing a substantial quantity of any of the following services to a partnership, S corporation, or other entity as a partner thereto:

(a) advising as to the advisability of investing in, purchasing, or selling a specified asset;

(b) managing, acquiring, or disposing of a specified asset;

(c) arranging financing with respect to acquiring specified assets; or

(d) any activity in support of the services described in subparagraphs (a) through (c) of this paragraph.

A partner shall not be deemed to be providing investment management services under this section if the partnership interest is held directly or indirectly by a corporation, or any capital interest in the partnership, which provides the taxpayer with a right to share in partnership capital commensurate with the amount of capital contributed, determined at the time of receipt of such partnership

interest, or the value of partnership interest subject to tax under section 83 of the Internal Revenue Code (26 U.S.C. s.83), upon the receipt or vesting of such interest.

"Specified asset" means certain securities, real estate held for rental or investment, interests in partnerships, commodities, or options or derivatives contracts, except if at least 80 percent of the average fair market value of the specified assets of the partnership, S corporation, or other entity during the taxable year consists of real estate.

(3) This subsection shall remain inoperative until enactment into law by the states of Connecticut, New York, and Massachusetts of legislation having an identical effect with this subsection, sections 7 and 9 of P.L.2018, c.45 (C.54A:5-16 and C.54:10A-6.4), and subsection (D) of section 6 of P.L.1945, c.162 (C.54:10A-6), as shall be determined by the Director of the Division of Taxation in the Department of the Treasury.

e. [1]**[**If an employee's state of residence uses a "convenience of the employer" test when determining the source of income of a nonresident, income or wages earned by a nonresident are allocated to the employer's location, unless the nonresident works from an out-of-state location due to the necessity of the employer, rather than the convenience of the employee.**]** 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 [2]**[**, but that location for the performance of the personal services is not necessitated by the employer**]** that were not required by the employer to be performed outside of New Jersey[2] , and whose state of residence imposes an income or wage tax that requires employee compensation [2]to[2] be sourced to an employer's location if [2]**[**a**]** the[2] nonresident [2]**[**of that state**]**[2] renders the personal services [2]**[**as an employee**]**[2] from an out-of-state location for the convenience of the [2]nonresident[2] employee and not due to the necessity of the employer, [3]**[**that same sourcing rule shall apply to**]** this State shall impose a similar New Jersey sourcing rule on[3] that income of [2]**[**a**]** the[2] nonresident [2]**[**of this State who is rendering personal services for an employer located in this State**]**[2] .[1]

[3]f. Notwithstanding the provisions of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), to the contrary, the Director of the Division of Taxation in the Department of the Treasury may adopt, immediately upon filing with the Office of Administrative Law, regulations that the director deems necessary to implement the provisions of this section, which regulations shall be effective for a period not to exceed 180 from the date of filing. The director shall thereafter amend, adopt, or

readopt the regulations in accordance with the requirements of P.L.1968, c.410 (C.52:14B-1 et seq.).[3]

(cf: P.L.2018, c.45, s.6)

3. (New section) a. For taxable years beginning on and after January 1, 2020 but before January 1, 2024, a resident taxpayer who:

(1) pays 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) applies for and is 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) files 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) obtains 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 shall be allowed a credit against the tax otherwise due for the taxable year under the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., in amount equal to 50 percent of the amount of taxes that are [1][refunded by such tax court or tribunal and allocated to this State] 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[1] .

b. If the amount of the credit allowed pursuant to subsection a. of this section exceeds the amount of tax otherwise due, that amount of excess shall be an overpayment for the purposes of N.J.S.54A:9-7; provided however, that subsection (f) of N.J.S.54A:9-7 shall not apply.

[2][1]4. (New section) a. As used in this section:

"Authority" means the New Jersey Economic Development Authority established pursuant to P.L.1974, c.80 (C.34:1B-1 et seq.)

"Qualified taxpayer" means 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. A qualified taxpayer does not include an individual who received a credit pursuant to this section in a prior taxable year.

b. A qualified taxpayer shall be allowed a credit against the tax otherwise due pursuant to the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., in the amount of $2,000 for the taxable year.

c. The authority shall determine the taxpayer's eligibility for a tax credit, and shall issue a certification awarding the tax credit to the taxpayer. The value of tax credits approved by the authority pursuant to this section shall not exceed a total of $10,000,000 in any fiscal year. Certifications awarding tax credits shall be provided to applicants in the order in which the authority receives the applications.

d. The Director of the Division of Taxation in the Department of the Treasury shall prescribe the order of priority of the application of the credit allowed under this section and any other credits allowed by law against the tax otherwise due for the taxable year under N.J.S.54A:1-1 et seq. The amount of the credit applied under this section against the tax imposed under N.J.S.54A:1-1 et seq. for the taxable year, together with any other credits allowed by law, shall not reduce the tax liability to an amount less than zero.[1]]2

[1][4.]] 2[[5.[1]] 4.]2 (New section) a. There is established a pilot program, to be administered by the New Jersey Economic Development Authority, through which the authority shall provide grants to businesses to assign their employees, who are New Jersey residents assigned to locations outside of the State, to New Jersey locations. A business shall be eligible for a grant under the pilot program if the business has 25 or more full time employees and is [1][legally domiciled] principally located[1] in another state.

b. A business seeking a grant pursuant to this section shall submit an application for approval to the authority 2on or before July 1, 2028,2 in the form and manner prescribed by the chief executive officer of the authority. Following approval of an application, but before the disbursement of grant funds, the authority shall require the business to enter into a grant agreement. The grant agreement shall, at a minimum, specify the amount of the grant to be awarded to the business 2[and] ,2 the minimum number of resident employees the business shall assign to the State 2, and, if applicable, the terms governing actions proposed to be undertaken by the business for the purpose of receiving the preference authorized by subsection c. of this section2 . If the authority determines that the business made a material misrepresentation on the business's grant application or if the business fails to comply with any requirement set forth in the grant agreement, then the business shall return to the authority any grant awarded pursuant to this section.

c. The value of the grant shall be the 2[net revenue realized by the State through]2 New Jersey Gross Income Tax 2[paid by]

withholdings of[2] resident employees re-assigned by the business to a New Jersey location [1], as certified by the Director of the Division of Taxation,[1] or [2][$100,000] $500,000[2], whichever is less. In awarding the grants made available by this section, the authority may establish a preference for businesses that [2]:[2] acquire or lease office space in this State and make a capital investment in such office space [2]; submit to the authority a plan showing that the business will provide bonuses to, or otherwise increase the compensation of, employees relocating to the State; or both[2]. The sum of all grants awarded pursuant to this section shall not exceed [1][$10,000,000] [2][$25,000,000[1]] $35,000,000[2] in any State fiscal year.

As used in this subsection, "capital investment" means expenses that the business incurs, or are incurred on behalf of the business by its landlord, for construction, repair, renovation, improvement, equipping, or furnishing of a building or structure acquired or leased by the business and used in connection with the operation of the business.

[1][5.] [2][6.[1]] 5.[2] Notwithstanding the provisions of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), to the contrary, the Director of the Division of Taxation in the Department of the Treasury may adopt, immediately upon filing with the Office of Administrative Law, regulations that the director deems necessary to implement the provisions of sections 1 through [1][3] [2][4[1]] 3[2] of [1][this act] P.L. , c. (C.) (pending before the Legislature as this bill)[1] , which regulations shall be effective for a period not to exceed 180 days from the date of the filing. The director shall thereafter amend, adopt, or readopt the regulations in accordance with the requirements of P.L.1968, c.410 (C.52:14B-1 et seq.).

[1][6.] [2][7.[1]] 6.[2] There is appropriated from the General Fund to the New Jersey Economic Development Authority the sum of [1][$10,000,000] [2][$25,000,000[1]] $35,000,000[2], subject to the approval of the Director of Budget and Accounting [1]in the Department of the Treasury[1] , for the grants authorized pursuant to section [1][4] [2][5[1]] 4[2] of [1][this act] P.L. , c. (C) (pending before the Legislature as this bill)[1] .

[2][[1]8.] 7.[2] N.J.S.54A:9-17 is amended to read as follows:

54A:9-17. (a) General. The director shall administer and enforce the tax imposed by this act and is authorized to make such rules and regulations, and to require such facts and information to be reported as he may deem necessary to enforce the provisions of this act. The director may divide the State into districts in each of

which a branch office may be maintained by him, but in no case shall a county be divided in forming a district.

(b) Delegation of powers. The director may delegate to any officer or employee of his division such of his powers as he may deem necessary to carry out efficiently the provisions of this act, and the person or persons to whom such power has been delegated shall possess and may exercise all of the power and perform all of the duties herein conferred and imposed upon the director.

(c) Examination of books and witnesses. The director for the purpose of ascertaining the correctness of any return, or for the purpose of making an estimate of taxable income of any person, shall have power to examine or to cause to have examined, by any agent or representative designated by him for that purpose, any books, papers, records or memoranda bearing upon the matters required to be included in the return, and may require the attendance of the person rendering the return or any officer or employee of such person, or the attendance of any other person having knowledge in the premises, and may take testimony and require proof material for his information, with power to administer oaths to such person or persons.

(d) Abatement authority. The director, on his own motion, may abate any small unpaid balance of an assessment of income tax, or any liability in respect thereof, if the director determines under uniform rules prescribed by him that the administration and collection costs involved would not warrant collection of the amount due. He may also abate, on his own motion, the unpaid portion of the assessment of any tax or any liability in respect thereof, which is excessive in amount, or is assessed after the expiration of the period of limitation properly applicable thereto, or is erroneously or illegally assessed. No claim for abatement under this subsection shall be filed by a taxpayer.

(e) The Department of the Treasury, Division of Taxation, may enter into an agreement with the taxing authorities of any state which imposes a tax on or is measured by income to provide that compensation paid in such state to residents of this State shall be exempt from such tax; in such case any compensation paid in this State to residents of such state shall be exempt from New Jersey personal income tax. The Division <u>of Taxation</u>, in such agreements, may provide for reciprocal withholding, employer liability, exchange of information and all other matters relating to cooperation between the states. <u>The provisions of subsection (e) of N.J.S.54A:4-1 and subsection e. of N.J.S.54A:5-8 shall not affect any agreement entered into by the Division of Taxation and the taxing authorities of another state pursuant to this subsection.</u> [1]

(cf: N.J.S.54A:9-17)

[1]**[**7.**]** [2]**[**9.[1]**]** 8.[2] This act shall take effect immediately, except that section 2 shall first apply to taxable years beginning on or after January 1, 2023.

Concerns tax treatment of individual's income earned outside state of residence; appropriates $35 million.