

# ASSEMBLY BUDGET COMMITTEE

## STATEMENT TO

### **ASSEMBLY, No. 5323**

with committee amendments

# **STATE OF NEW JERSEY**

DATED: JUNE 27, 2023

The Assembly Budget Committee reports favorably Assembly Bill No. 5323, with committee amendments.

As amended, 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 under the Corporation Business Tax Act (1945);

(2) provide that for purposes of the Corporation Business Tax Act (1945), the definitions of investment companies, captive investment companies, regulated investment companies, captive regulated investment companies, real estate investment trusts, and captive real estate investment trusts do not include any company or trust of which at least 50 percent of the shares, by vote or value, is owned or controlled, directly or indirectly, by a state or federally chartered bank, savings bank, or savings and loan association with assets that do not exceed \$15 billion;

(3) make technical changes to the definition of “taxable net income” to clarify the taxable years in which the new treatment of net operating losses, as provided by the bill, would take effect ; and

(4) renumber sections 9 through 15 as sections 8 through 14.

FISCAL IMPACT:

Fiscal information for this bill is currently unavailable.