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 By Donna Borak  
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- Further action on the proposal expected in 2023

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 New Jersey Moves to Strike Back at New York Remote-Work Taxes

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1. Bipartisan bill passes Senate budget committee
2. Further action on the proposal expected in 2023

A bipartisan group of New Jersey lawmakers want to offer a new \$2,000 tax credit for residents who can successfully appeal their New York personal income tax bills.

The credit is part of a much broader retaliatory tax plan aimed at New York that is currently advancing through the New Jersey Legislature, to put an end to what the state says is double taxation of its residents and roughly \$1 billion in revenue lost to its neighbor.

New Jersey's proposal would adopt New York's aggressive tax treatment by applying what's known as the "convenience of the employer" rule, which allows a state to claim income tax on nonresident employees who work for companies in the state. The measure in New Jersey, if adopted, would be identical.

The bill (S-3128), sponsored by state Sens. Jon Bramnick (R) and Joseph Lagana (D) and approved this week by a Senate budget panel, also would establish a \$25 million grant program to incentivize New York businesses to open offices in New Jersey.

"We can no longer sit back and wait for New York leadership to do the right thing. State taxpayers deserve more consideration," said Bramnick. "This will send a message to New York that we are done playing by the rules."

A spokesman for the New York Department of Finance didn't immediately respond to comment.

#### Pushing Ahead

With only a handful of legislative days left this year, the proposal, which also has the backing of Gov. Phil Murphy (D), is expected to advance in early 2023, according to Bramnick.

Danielle Currie, a New Jersey Treasury spokeswoman, declined to comment on the pending legislation.

In September, spurred on by companies' work-from-home arrangements, Murphy rolled out a bipartisan proposal that would impose payroll taxes on people who work at their out-of-state homes and for a New Jersey-based company.

Murphy said he's worked well on various issues with New York leaders, fellow Democrats, but this subject is different.

"If you're paying full freight in the old, traditional going and commuting into work every day when in fact you're in a hybrid reality today, that's just not fair," he told Bloomberg TV in November.

New Jersey, along with 13 other states, previously filed a US Supreme Court brief in late 2020 to support New Hampshire's efforts to end a similar tax rule in Massachusetts. The high court didn't take up the case.

It's "100% driven by remote work," said Bramnick of the legislative plan. "No question about that."

About 400,000 New Jerseyans work in New York City and pay as much as \$3.7 billion a year in New York taxes, according to US Rep. Josh Gottheimer (D), who represents the state's Fifth Congressional District. He has said that residents would each save almost \$20,000 in taxes and commuting costs annually by staying in New Jersey.

Before the pandemic, a five-day in-person work week meant New York's claim on personal income tax was tolerable, because office workers physically spent time in another state. As remote work flexibility has been extended, and in some offices permanently, New York's claim on nonresidents' income when employees consistently work from their homes in New Jersey has become problematic, according to some experts.

"You have a situation in which people are saying, 'We cannot afford to give up revenue on a continuing basis because people are not going to be going back to the office potentially at all,'" said Tom Corrie, leader of Marcum LLP's Greater NY Metropolitan Region State and Local Tax practice.

#### 'Aggressive Tax Treatment'

New Jersey, unlike its neighbor, relaxed tax rules pertaining to employer income-tax withholding, corporate business, and sales taxes throughout the pandemic as workers fled hardest-hit cities to work remotely elsewhere.

During the pandemic, the Murphy administration instructed employers to withhold source income based on where the business operates, not an employee's residence. It also agreed to waive the "nexus" standard, which is tied to whether a taxpayer has geographic connection for corporate business tax and sales tax. That temporary relief ended in October.

New York, however, maintained a right to tax income earned from any employee working for a New York-based company even when they are working from home in New Jersey or any other state.

"New York was aggressively going after people who worked for a New York company, even though they were working remotely," said Bramnick. "So as a result of that New Jersey is going to change its policy, and say, 'OK, you're a New Yorker working remotely four days a week in New York, but you come into New Jersey one day. So guess what? Maybe we won't tax you for one day. Maybe we'll say, 'You work for a New Jersey company, you should be paying 100% to New Jersey.'"

Much like a similar law in nearby Connecticut, the New Jersey proposal is specifically targeted at states using their own convenience of the employer rule. Even before the pandemic changed where people work, Connecticut passed its legislation in 2019 because it was losing \$450 million in taxes from the more than 80,000 workers commuting into New York, according to some analyses.

"It's a retaliatory rule specifically geared to New York in both cases," said Corrie.

Grant Thornton's State and Local Tax Leader Jamie Yesnowitz anticipates more states challenging revenue shortfalls due to increased remote work flexibility.

Only a handful of states use this rule: Connecticut, Delaware, Nebraska, New York, and Pennsylvania. Arizona eliminated it in 2021 and Massachusetts used it temporarily during the pandemic.

"A lot of people are working in hybrid work environments, where they live in one state and work in another," said Yesnowitz. "We expect to see in the next six months at least some jurisdictions to start addressing that topic."

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