



This Week in State Tax (TWIST)

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New Jersey: Convenience of the Employer Rule Enacted

Recently enacted New Jersey Assembly Bill 4694 is intended to alleviate the tax burdens imposed on New Jersey residents who are assigned to work locations outside of the state. First and foremost, the bill adopts a so-called “convenience of the employer” test for sourcing nonresident employee wages if the nonresident’s state of residence applies a convenience of the employer rule to source similar wages to their state. Currently five states, Connecticut, Delaware, Nebraska, New York and Pennsylvania have convenience of the employer rules in affect. Residents of these states, except Pennsylvania, are covered under this recently enacted legislation. New Jersey and Pennsylvania have an existing reciprocity agreement which exempts nonresident withholding of a resident of either state for services performed in the other state. The provisions of Assembly Bill 4694 shall not affect any agreement entered into by the Division of Taxation for such reciprocity. For example, New York currently applies a convenience of the employer rule, which results in nonresident employees having New York income taxes withheld on days when employees are working remotely (other than when the remote work is at the necessity of the employer). Under the bill, if a resident of New York is working for a New Jersey employer from their home for the employee’s own convenience (and not out of necessity of the employer), the income or wages earned by the New York resident are allocated to the employer’s location in New Jersey. The convenience of the employer rule is effective retroactively to tax years beginning on or after January 1, 2023.

Assembly Bill 4694 also provides tax credits to incentivize New Jersey residents to file legal actions against other states that collect taxes from them for services they perform while physically located in New Jersey. Specifically, a refundable tax credit will be available to resident taxpayers who: (1) pay 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) apply for and are 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) file 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) obtain 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. The amount of the tax credit is equal to 50 percent of the amount of taxes that are owed to New Jersey because of adjusting the credit for taxes paid to another state. Finally, the bill establishes a pilot program to award grants to businesses that assign New Jersey resident employees to New Jersey business locations. Other than the retaliatory “convenience of the employer” provision, all provisions take effect upon enactment. Please contact [John Montgomery](#) with questions on New Jersey Assembly Bill 4694.

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