

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

SENATE, No. 3704

with committee amendments

STATE OF NEW JERSEY

DATED: JUNE 12, 2023

The Senate Budget and Appropriations Committee reports favorably Senate Bill No. 3704, with committee amendments.

As amended, this bill revises the elective pass-through business alternative income tax, which was enacted in January 2020. The optional tax allows pass-through entities, such as partnerships and S corporations, to pay an entity-level tax while the entities' owners obtain an offsetting credit against their taxes. The optional tax effectively allows entity owners to reduce the amount of tax that is applied towards the cap on the federal income tax deduction for state and local taxes.

Under current law, the pass-through business alternative income tax liabilities of partnerships and S corporations are calculated differently. The pass-through business alternative income tax liability of a partnership is calculated using all income derived from sources inside and outside of New Jersey. The pass-through business alternative income tax liability for an S corporation is calculated based on the share of S corporation income that is allocated to New Jersey.

This bill would more closely align the treatment of S corporation income under the pass-through business alternative income tax to the treatment provided to partnership income under current law. Under the bill, the pass-through business alternative income tax liability of a New Jersey S corporation would be calculated based on the sum of: (1) the pro rata share of S corporation income allocated to New Jersey and the pro rata share of S corporation income not allocated to New Jersey of all resident shareholders; and (2) the pro rata share of S corporation income allocated to New Jersey of all shareholders who are not resident individuals.

The bill also modifies the date upon which pass-through entities may elect to pay the pass-through business alternative income tax. Under current law, the election is to be made annually on or before the due date of the entity's tax return. Under the bill, this election date would be changed to on or before the 15th day of the third month of the taxable year. The bill further modifies the date upon which pass-through entities may revoke the election to pay the pass-

through business alternative income tax, to on or before the 15th day of the third month of the taxable year.

COMMITTEE AMENDMENTS:

The committee amended the bill to eliminate the differential tax treatment of “electing resident S corporations” and “standard S corporations” under the pass-through business alternative income tax. The committee amendments instead provide that the pass-through business alternative income tax liability of a New Jersey S corporation would be calculated based on the sum of: (1) the pro rata share of S corporation income allocated to New Jersey and the pro rata share of S corporation income not allocated to New Jersey of all resident shareholders; and (2) the pro rata share of S corporation income allocated to New Jersey of all shareholders who are not resident individuals.

The committee also amended the bill to provide that the date upon which a pass-through entity may elect to pay the pass-through business alternative income tax, and the date upon which it can revoke the election, would be on or before the 15th day of the third month of the taxable year.

FISCAL IMPACT:

The Office of Legislative Services (OLS) concludes that the bill will be revenue-neutral over time. The bill does not change the pass-through entity tax rates; it only changes the amount of income that, upon taxpayer election, would be subject to the tax. The OLS notes that the PT-BAIT may not be revenue neutral in any given year. To date, the pass-through entity tax has resulted in an increase in State tax revenues. Some or all of any revenue increase resulting from the bill may be offset by corporation business tax credits and gross income tax credits awarded to members of pass-through entities that elect to pay the pass-through entity tax. Data regarding the number of S Corporations that pay the tax, their total tax liabilities, and the amount of S corporation income that may be subject to the tax if the bill is enacted into law, are not available at this time.