

LEGISLATIVE FISCAL ESTIMATE

[First Reprint]

SENATE, No. 3704

STATE OF NEW JERSEY 220th LEGISLATURE

DATED: NOVEMBER 27, 2023

SUMMARY

- Synopsis:** Revises pass-through business alternative income tax to include more forms of S corporation income in calculation of pass-through business alternative income tax liability; modifies election and revocation dates for pass-through business alternative income tax.
- Type of Impact:** No fiscal impact.
- Agencies Affected:** Department of the Treasury.

Office of Legislative Services Estimate

Fiscal Impact	<u>FY 2024 & Thereafter</u>
State Finances	No Fiscal Impact.

- The Office of Legislative Services (OLS) concludes that the changes made to the pass-through business alternative income tax by the bill will have no impact on State finances. The OLS anticipates that the bill will be revenue-neutral over time, even if the pass-through business alternative income tax may not be revenue-neutral in any given year. The bill does not change pass-through entity tax rates; it only changes the amount of income that, upon taxpayer election, would be subject to the tax.
- 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 business alternative income 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.

BILL DESCRIPTION

The bill revises the elective pass-through business alternative income tax, which was enacted in January 2020. Currently, this 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.

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.

The bill more closely aligns 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 by which pass-through entities may elect to pay the pass-through business alternative income tax. Current law requires the election to be made annually on or before the due date of the entity's tax return. The bill changes this election date to on or before the 15th day of the third month of the taxable year. The bill further modifies the date by 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.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The OLS concludes that the changes made to the pass-through business alternative income tax by the bill will be revenue-neutral over time and will have no impact on State finances. The bill does not change 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, while the pass-through business alternative income tax is assumed to be revenue-neutral over time, it may not be revenue-neutral in any given year. Indeed, the pass-through entity tax has, to date, 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 business alternative income 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.

Section: Revenue, Finance, and Appropriations

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This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).