

NEW JERSEY COMMUTERS AND TELECOMMUTERS BEWARE: POTENTIAL PANEL TO STUDY RESIDENT CREDITS ON TAXES PAID TO NEW YORK!

Hodgson Russ Tristate Tax Alert
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by **Debra Herman and Elizabeth Pascal**

A New Jersey Senate Committee advanced a bill last week that would require the New Jersey Treasurer to issue a report to the Legislature on New York's taxation of New Jersey's residents' income. Per the legislative findings set forth in the bill, "thousands of New Jersey residents, many of whom work from home, have New York income taxes taken from their paychecks because their employers are located in New York State." This treatment of COVID-19 telecommuters was confirmed by New York earlier this week, whereby the New York Tax Department stated in a FAQ as follows: "If you are a nonresident whose primary office is in New York State, your days telecommuting during the pandemic are considered days worked in the state unless your employer has established a bona fide employer office at your telecommuting location." A recent amendment to the bill also requires the panel to discuss whether New Jersey should take part in the current litigation between New Hampshire and Massachusetts, where New Hampshire is seeking to enjoin the Commonwealth from enforcing its new telecommuting regulation against New Hampshire residents.

Normally, a proposed bill to study an issue that might lead to a tax law change would not be cause for concern. But New Jersey's liberal resident credit regime has long been an outlier in the tristate area, and of particular benefit to New Jersey residents who earn income in New York or are statutory residents of New York. Currently, residents of New Jersey are allowed a credit against their New Jersey personal income tax liability for the taxes they pay to New York (including New York City), which means the resident credit is, per the legislative findings "syphon[ing] money away from the State of New Jersey's budget." New Jersey residents now working for their New York employers from their individual New Jersey homes, are using New Jersey's "infrastructure and services." The sponsors of this bill are seeking to address this "inequitable" paradigm, while at the same time lowering their residents' tax bills.

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If New Jersey eliminates or scales back its resident credit, however, without any shift in New York's taxation of New Jersey telecommuters, New Jersey residents would likely face double taxation, not "equitable taxation" as sought by the sponsors.

Contact Debra Herman (646.218.7532) or Elizabeth Pascal (716.848.1622) if you have any questions about how this recent tax development may impact you, your employees or your business.

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