



## **MEMORANDUM**

**TO:** Members of the Authority

**FROM:** Tim Sullivan  
Chief Executive Officer

**DATE:** March 7, 2024

**SUBJECT:** New Jersey Re-assigning In-State Employees (NJ RISE) Program

### **Request:**

The Members are asked to approve:

1. The creation of the New Jersey Re-assigning In-State Employees (NJ RISE) Program, a pilot program that will provide grants to businesses principally located in another state that apply before July 1, 2028 to re-assign the location of employment for certain of their New Jersey resident employees from out-of-State to New Jersey.
2. The utilization of up to \$35,000,000 for NJ RISE in any State fiscal year, contingent on continued appropriations.
3. Delegation of authority to the Chief Executive Officer to approve individual applications for the NJ RISE Program within the parameters set forth in this memo and the attached program specifications.
4. Delegation of authority to the Chief Executive Officer to extend the time period for submission of the CPA Certification for a one-time extension of up to six (6) months and for administrative changes described in this memo.

### **Background:**

On July 21, 2023, the New Jersey State Legislature passed and Governor Phil Murphy approved P.L. 2023, c.125 ("Chapter 125"), which included a pilot grant program, to be administered by the New Jersey Economic Development Authority (EDA), to provide grants to businesses principally located outside of New Jersey that re-assign New Jersey residents that are currently assigned to work in a state with "convenience of the employer" income taxation to work in New Jersey locations.

## **Convenience of the Employer Sourcing Taxation**

States tax compensation in different ways. In some states, like New Jersey (with the exceptions noted below), the state taxes an employee's compensation based on the location where the work was done, regardless of whether the location is at the convenience of the employee or the employer. For instance, an employee who is assigned by the employer to work at a location in New Jersey but chooses to work at home outside of the State three days a week, will be taxed by New Jersey only for the two days the employee works in the State. The exceptions in New Jersey are due to (1) the Reciprocal Agreement between New Jersey and Pennsylvania that subjects compensation by the residents of each state to the income tax of the state of residency and (2) other limited statutory exceptions.

Other states, such as Delaware, Nebraska, and New York, implement a "convenience of the employer" income taxation. Under this system, the state taxes a nonresident employee's compensation based on ("sourced to") the employer's assigned location even if the employee is working from an out-of-state location (e.g., at home in their resident state) for the employee's own convenience rather than for the necessity or convenience of the employer. For example, a New Jersey resident employee who is assigned by their employer to work at a location in a "convenience of the employer" state ("State A") but whose employer requires him to work in New Jersey three days a week will be taxed by State A for the compensation earned for the two days the employee is at the State A location and not for the three days the employee is in New Jersey, because the work in New Jersey is at the necessity or convenience of the employer. If, however, a New Jersey resident employee who is assigned by their employer to work at a location in State A chooses to work at home in New Jersey three days a week, State A will tax all five days of compensation, as if the employee were working at the assigned State A location every day, because the decision to work in New Jersey was at the convenience of the employee.

The goal of NJ RISE is to encourage businesses principally located outside of New Jersey to re-assign New Jersey resident employees who are assigned to locations in states with "convenience of the employer" income taxation to locations in New Jersey. It is anticipated that the effect of the re-assignment will lead to increased revenue from the New Jersey Gross Income Tax.

### **Program Details:**

The Authority shall provide grants to businesses principally located in another state to re-assign employees who are New Jersey residents assigned to work at locations in a state that uses the "convenience of the employer" income taxation to work at New Jersey locations. The grant is equal to the amount of New Jersey Gross Income Tax withholdings of the re-assigned resident employees during one tax year of the business, not to exceed \$500,000 in the aggregate per business. The sum of all grants approved will not exceed \$35 million per State fiscal year. Detailed program specifications, including definitions for capitalized terms, are attached.

### **Eligibility:**

- The business has 25 or more U.S. Full-Time Employees.
- The business must submit a completed application to the EDA on or before July 1, 2028.
- The business is a Business Principally Located In Another State.
- The business must be in substantial good standing with the New Jersey Department of Labor and Workforce Development (LWD) and New Jersey Department of Environmental Protection (DEP).
- Re-assigned Employees are Full-Time Employees and part-time employees (which includes employees leased through a professional employment organization but not independent contractor or individuals working on a consulting basis for the business) that are re-assigned by their

employers from a place of work in a State with Convenience of The Employer Income Taxation to work at a location in New Jersey.

**Restrictions:**

- The value of all grants to the business under the program shall not exceed \$500,000.
- No grant may be based upon a Resident Employee for which a business has an active EDA incentive.
- A business's application is identified by EIN. Affiliates with different EIN numbers will not be included in the same application and can apply for separate grant awards.
- The Authority will not approve awards that exceed the sum of \$35 million in any State fiscal year, and the Authority will not approve more than the amount of appropriation it has received from the Legislature. The current appropriation is \$35 million.

A current tax clearance will also need to be provided at application and maintained through disbursement to demonstrate the applicant is properly registered to do business in New Jersey and in substantial good standing with the New Jersey Division of Taxation.

All construction contracts that the applicant enters into to meet the requirements of the program that are equal or greater to \$2,000 are subject to the Authority's affirmative action requirements, N.J.S.A. 34:1B-5.4, and prevailing wage requirements, N.J.S.A. 34:1B-5.1.

***Application Process:***

1. Review of completed applications will be done on a rolling basis, with delegated authority for the CEO to make approvals. A business may make changes to a completed application until approval but no modifications after approval, except as described in the fee section below. Although the statute allows the Authority in its discretion to enact a preference for businesses that acquire or lease office space in this State and make a capital investment in such office space or that submit to the Authority a plan showing that the business will provide bonuses to, or otherwise increase the compensation of, employees re-assigned to the State (or both), in order to simplify the approval process, staff recommends that no preference be made.
2. A business may submit multiple applications, including within one tax year. Each application must be for Resident Employees not included in any other program award.
3. In the application, the business will select the tax year for reimbursement of Withholdings, which shall be either the tax year of application or the following tax year.
4. Approval will be made for a Grant Award Cap based on Withholdings estimated by the business of proposed Re-assigned Employees, not to exceed \$500,000 in the aggregate per business.

After approval, the business may replace proposed Re-assigned Employees if it submits to the Authority the same information it submitted at application for the original Re-Assigned Employees. Such replacement shall not be considered a modification or an administrative change and shall be subject to the Grant Award Cap.

### **Grant Disbursement Process:**

After the completion of the tax year selected by the business for the grant, the business must submit a CPA Certification within 120 days after the completion of the tax year. Upon staff's satisfactory review and acceptance of the CPA Certification, the business will be paid 75% of the estimated Withholdings substantiated by the CPA Certification. Staff will submit information to the Division of Taxation, which is required under Chapter 125 to certify the actual amount of Withholdings of the Re-assigned Employees. Based on that certification, staff will pay the remainder of the Withholdings, not to exceed the amount of the Grant Award Cap.

### **Delegated Authority:**

The Members are requested to approve:

1. Delegated authority to the Chief Executive Officer to approve individual applications to the NJ RISE Program in accordance with the terms set forth in the attached product specifications. Entities whose applications are denied will have the right to appeal (which must be within at least 10 business days) pursuant to existing policies and delegated authority.
2. Delegation of authority to the Chief Executive Officer to extend the time period for submission of the CPA Certification for a one-time extension of up to six (6) months. No further extensions will be granted and any grantee that does not submit their CPA Certifications within that time will forfeit their grant award.
3. Delegation of authority to the Chief Executive Officer for administrative changes as described below. These changes are routine and staff has experience processing these changes based on other incentive programs.

### **Program Funding**

In Chapter 125, funds were appropriated from the General Fund to the New Jersey Economic Development Authority in the sum of \$35,000,000 subject to the approval of the Director of Budget and Accounting in the Department of the Treasury. Approvals for grants in excess of the currently appropriated amount will be subject to future appropriations and availability of funds.

### **Fees:**

Application Fee: \$5,000

Administrative Fee: \$1,000

Administrative fee will be charged for routine updates to customer files such as company name changes and redesignations as a result of an internal reorganization and for extensions. Modifications that will not be accepted include mergers, acquisitions, spin-offs, separations, and divestitures.

\* All fees are non-refundable, unless funds are not available to support the application request.

**Recommendation:**

The Members are asked to approve:

1. The creation of the New Jersey Re-assigning In-State Employees (NJ RISE) Program, a pilot program that will provide grants to businesses principally located in another state that apply before July 1, 2028 to re-assign the location of employment for certain of their New Jersey-resident employees from out-of-State to New Jersey.
2. The utilization of up to \$35,000,000 for NJ RISE in any State fiscal year, contingent on continued appropriations.
3. Delegation of authority to the Chief Executive Officer to approve individual applications for the NJ RISE Program within the parameters set forth in this memo and the attached program specifications.
4. Delegation of authority to the Chief Executive Officer to extend the time period for submission of the CPA Certification for a one-time extension of up to six (6) months and for administrative changes described in this memo.

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Tim Sullivan  
Chief Executive Officer

Prepared by: Tomasita Generals

Attachments:

Appendix A – Proposed Product Specifications: **NJ RISE**

<b>Proposed Program Specifications</b> <b>March 7, 2024</b>	
<b>Funding Source</b>	EDA has received an appropriation in State Fiscal Year (SFY) 2024 for \$35 million. EDA is authorized to award up to \$35 million per SFY, subject to additional appropriations.
<b>Program Purpose</b>	Grants to businesses principally located in another state to re-assign their New Jersey resident employees assigned to work at locations in states that have convenience of the employer taxation to work at New Jersey locations.
<b>Definitions</b>	<ul style="list-style-type: none"> <li>• “Business Principally Located In Another State” means a business that has a primary place of business outside of New Jersey, as determined by the Authority, in its sole discretion, which may consider factors such as revenue size, job count, customer base, square footage, and the location of the actual seat of management or control of the corporation.</li> <li>• “Employee” means a person who is employed by a business in the United States for consideration. An “Employee” shall also include a person who is employed pursuant to an employer leasing agreement in accordance with N.J.S.A. 34:8-67 et seq. between a business and a professional employment organization. “Employee” shall not include any person who works as an independent contractor or on a consulting basis for the business.</li> <li>• “Full-Time Employee” means an Employee who is employed for consideration for at least 35 hours a week.</li> <li>• “Grant Award Cap” means the maximum amount of the award at approval and stated in the grant agreement.</li> <li>• “Re-assigned Employee” means a Resident Employee that before application is assigned to a location in a State With Convenience Of The Employer Income Taxation and after approval is assigned to a location in New Jersey. “Re-assigned Employee” shall not include any Resident Employee assigned to a location in a State With Convenience Of The Employer Income Taxation within three months prior to the date of the completed application absent the Authority’s acceptance of satisfactory documentation submitted by the business to demonstrate a bona fide assignment.</li> <li>• “Resident Employee” means a Full-Time Employee or part-time Employee who is a New Jersey resident taxpayer.</li> <li>• “State With Convenience Of The Employer Income Taxation” means a state that imposes an income or compensation tax that requires employee compensation to be sourced to an employer’s location if the nonresident employee renders the personal services</li> </ul>

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	<p>from an out-of-state location for the convenience of the nonresident employee and not due to the necessity of the employer, excluding any state with a reciprocal agreement with New Jersey concerning the taxation of income.</p> <ul style="list-style-type: none"> <li>• “Withholdings” has the same meaning as that used in N.J.S.A. 54A:7-1 to -7 and N.J.A.C. 18:35-7.1 to -7.11 and, for purposes of this program, will be determined by the Division of Taxation.</li> </ul>
<b>Eligible Applicants</b>	<ul style="list-style-type: none"> <li>• The business has 25 or more Full-Time Employees.</li> <li>• The business must submit a completed application to the EDA on or before July 1, 2028.</li> <li>• The business is a Business Principally Located In Another State.</li> <li>• Must be in substantial good standing with the New Jersey Department of Labor and Workforce Development (LWD) and the New Jersey Department of Environmental Protections (DEP).</li> <li>• Re-assigned Employees may include Full-Time and part-time Employees but not independent contractors or individuals working on a consulting basis for the business.</li> <li>• A current tax clearance will need to be provided at application and maintained through disbursement to demonstrate the applicant is properly registered to do business in New Jersey and in substantial good standing with the New Jersey Division of Taxation.</li> </ul>
<b>Restrictions</b>	<ul style="list-style-type: none"> <li>• The value of all grants to the business under the program shall not exceed \$500,000.</li> <li>• No grant may be based upon a Resident Employee for which a business has an active EDA incentive.</li> <li>• A business’s application is identified by EIN. Affiliates with different EIN numbers will not be included in the same application and can apply for separate grant awards.</li> <li>• The Authority will not award more than the sum of \$35 million in any State fiscal year, and the Authority will not approve more than the amount of appropriation it has received from the Legislature.</li> </ul>
<b>Eligible Uses</b>	<p>There are no restrictions on the business’s use of the grant funds.</p>

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<b>Application</b>	<p>Each application to the Authority by a business must shall include the following information:</p> <ul style="list-style-type: none"> <li>• Evidence that the applicant is a Business Principally Located In Another State.</li> <li>• Evidence that the applicant has 25 Full-Time Employees., e.g. Form 941.</li> <li>• Job log of Resident Employees that are currently assigned to a location in a State With Convenience Of The Employer Income Taxation that the applicant proposes to be Re-assigned Employees, with estimated future New Jersey Withholdings.</li> <li>• Evidence to demonstrate that the proposed Re-assigned Employees are Resident Employees that are currently assigned to a location in a State With Convenience Of The Employer Income Taxation and will be Re-assigned Employees, which shall include but not be limited to: <ul style="list-style-type: none"> <li>a. Payroll report(s) from the business</li> <li>b. Documents demonstrating viability of each Re-assigned Employee’s work location in New Jersey</li> <li>c. Proof of the business’s Withholdings from the prior quarter to confirm that each proposed Re-assigned Employee is assigned to a location outside of New Jersey in a State With Convenience Of the Employer Income Taxation, e.g. document equivalent to New Jersey’s WR-30. If hired during that quarter, documentation to demonstrate bona fide assignment.</li> <li>d. W-3 for the relevant fiscal year.</li> </ul> </li> <li>• Selection by the business of the business’s tax year for reimbursement of Withholdings, which shall be either the tax year of application or the following tax year. The selected tax year will apply to all Re-assigned Employees associated with the grant.</li> <li>• A written certification by the chief executive officer, or equivalent officer for North American operations, stating that the business applying for the program is not in default with any other program administered by the State of New Jersey, and that the officer has reviewed the application information submitted and that the representations contained therein are true and accurate, under the penalty of perjury.</li> <li>• Indication whether any new work location(s) in New Jersey for Re-assigned Employees will require construction or renovation.</li> </ul>
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	<ul style="list-style-type: none"> <li>Any other necessary and relevant information as determined by the Authority for a specific application.</li> </ul>
<b>Application Review and Board Approval/ Delegated Authority</b>	<ul style="list-style-type: none"> <li>Review of completed applications will be done on a rolling basis without any preference, with delegated authority for CEO to make approvals.</li> <li>A business may submit multiple applications, including within one tax year. Each application must be for Resident Employees not included in any other active incentive.</li> <li>Approval will be made for a Grant Award Cap based on estimated Withholdings of proposed Re-assigned Employees.</li> </ul>
<b>Grant Amounts</b>	The grant amount is equal to the New Jersey Gross Income Tax Withholdings of Re-assigned Employees subject to the Grant Award Cap.
<b>Fees</b>	<p>Application Fee: \$5,000</p> <p>Administrative Fee: \$1,000</p> <p>Administrative fee will be charged for routine updates to customer files such as company name changes and redesignations as a result of an internal reorganization and for extensions. Modifications that will not be accepted include mergers, acquisitions, spin-offs, separations, and divestitures.</p> <p>* All fees are non-refundable, unless funds are not available to support the application request.</p>
<b>Grant Agreement</b>	<p>Upon approval, the authority shall send a grant agreement which will include, at a minimum:</p> <ul style="list-style-type: none"> <li>the Grant Award Cap</li> <li>the minimum number of Re-assigned Employees. The minimum number of Re-assigned Employees will be the number of Re-assigned Employees whose Withholdings add up to at least one half of the Grant Award Cap</li> <li>a provision that no modifications will be allowed, except for certain administrative changes (as described in the memorandum). The business may replace previously proposed Re-assigned Employees if it submits the information required in the Application section for the original Re-Assigned Employees; such replacement shall not be considered a modification and shall be subject to the Grant Award Cap</li> </ul>

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	<ul style="list-style-type: none"> <li>• a provision that payment under the grant agreement is subject to appropriation and that payment shall be made solely to the grantee and not to any professional employment organization that may be a co-employer of Re-assigned Employees</li> <li>• the requirement that absent extenuating circumstances and the written approval of the Authority, CPA Certifications are due 120 days after the completion of the tax year that the business has selected for reimbursement. The CPA Certification shall include a certification regarding the Re-assigned Employees by an independent CPA based on staff created “agreed upon procedures” and other documentation and certifications from the business as is consistent with other Authority job-based incentive programs.</li> <li>• a provision that, upon staff’s satisfactory review and acceptance of the CPA Certification the business will be paid 75% of the estimated Withholdings.</li> <li>• a provision that, upon the Division of Taxation’s certification of the actual amount of Withholdings of the Re-assigned Employees, the business will be paid the remainder of the certified amount of Withholdings, not to exceed the Grant Award Cap</li> <li>• recapture provisions in the event of overpayment and an event of default and full repayment for any material misrepresentation</li> <li>• the grant agreement will not require a compliance period</li> <li>• affirmative action and prevailing wage requirements, if applicable</li> <li>• a provision permitting an audit of the payroll records of the business and any other evidence and documentation supporting the reports required to demonstrate the Re-assigned Employees and the estimated Withholdings from time-to-time, as the Authority deems necessary</li> </ul>
<b>Disbursement</b>	EDA will disburse 75% of the grant award based on the CPA certification with a 25% retainage that will only be released after certification by the Division of Taxation of the actual amount of Withholdings of the Re-assigned Employees. The retainage is anticipated to allow staff to make adjustments to the payment amount without requesting repayment. As stated above, the grant agreement will require recapture in the unlikely event of overpayment.