

November 8, 2021

SENATE BILL NO. 2347
(First Reprint)

To the Senate:

Pursuant to Article V, Section I, Paragraph 14 of the New Jersey Constitution, I herewith return Senate Bill No. 2347 (First Reprint) without my approval.

This bill creates the Employment and Business-Related Tax Deferral Assistance Program in the New Jersey Economic Development Authority ("EDA"). The bill would allow certain small businesses with 10 or fewer full-time equivalent employees to defer the payment and remittance of certain employment and business-related taxes during the Coronavirus disease 2019 ("COVID-19") pandemic. The employment and business-related taxes that are eligible for deferment under the bill include the gross income tax, sales and use tax, petroleum products gross receipts tax, motor fuel tax, unemployment compensation, temporary disability benefits, and workers' compensation.

Under the bill, a qualifying small business must apply by July 31, 2021 and demonstrate that it has been negatively impacted by the COVID-19 pandemic through either a temporary shutdown, reduced hours, a 20 percent drop in revenue, employees unable to work, or a disruption in the supply chain. If the EDA approves a small business's application, then the small business would only be required to pay 50 percent of the applicable employment and business-related taxes that the small business has imposed and collected but elected to defer during the deferment period. The small business would then have until June 30, 2023 to pay or remit the remaining balance.

The COVID-19 pandemic continues to have a devastating impact on small businesses throughout the country and here in New Jersey. The impacts of the crisis have reached every industry in the world, but the pandemic's impacts on small businesses have been

particularly acute. Our small businesses are not only the storefront shops that anchor Main Street, but are also the engines of our State's economy, responsible for creating jobs and spurring economic growth. Small businesses will fuel New Jersey's resurgence when the COVID-19 pandemic is over, and I commend the bill's sponsors for their efforts to identify creative measures to sustain our small business community during this extraordinarily challenging time.

However, I am concerned that this proposed program sets a troubling precedent. The employment and business-related taxes that are affected by this bill are known as "trust-fund taxes." This is a special type of tax in which a person or entity collects a tax from another party and holds it in trust for the benefit of the government entity to which the tax is owed. The bill would allow a small business to retain taxes and contributions paid by its employees and customers who trust that these taxes and contributions will be paid to the State treasury on their behalf in a timely manner. Importantly, this is money that does not belong to, and never belonged to, the business.

For example, when an employer pays its employees, the employer does not pay its employees all the money that they earned. This is because the employer has the statutory duty of withholding gross income taxes from its employees' paychecks. Employees trust their employers to pay the withholdings to the State treasury on their behalf. The amount withheld comprises a portion of an employee's wages and is used to satisfy the employee's gross income tax liability to the State. Making sure the amounts collected are timely paid to the State has historically been, and must continue to be, a top priority for all businesses.

Aside from my substantial concerns about the practices endorsed by this legislation, the July 31, 2021 deadline set forth in the bill, by which small businesses would have been required to submit applications for participation in the Employment and Business-Related Tax Deferral Assistance Program, has passed. The bill passed both Houses of the Legislature on June 3, 2021, leaving only a few weeks for the EDA to stand up the Employment and Business-Related Tax Deferral Assistance Program and begin accepting applications. At the time of this bill's passage, the EDA was working diligently to provide technical assistance and award hundreds of millions of dollars in grants and loans to struggling businesses throughout the State. Since the date of this bill's passage alone, the EDA has approved 27,000 applications for grants, loans, guarantees of loans, and technical assistance totaling over \$331 million.

Through a suite of highly effective programs, including the Small Business Emergency Assistance Grant Program, Small Business Emergency Assistance Loan Program, Community Development Finance Institution Emergency Loan Loss Reserve Fund, NJ Entrepreneur Support Program, Emergency Technical Assistance Program, Community Stage Relief Grant Program, and Sustain and Serve NJ, the EDA is providing crucial lifelines to small businesses facing economic hardship due to the outbreak of COVID-19. Since the start of the pandemic, the EDA has approved more than 92,000 applications for grants, loans, guarantees of loans, and technical assistance, totaling more than \$665 million, with more grants in the pipeline to be awarded in the weeks and months to follow. The vast majority of support has been provided in the form of small business grants. Through four phases of the Small Business Emergency Assistance Grant Program, the EDA has approved 77,825 grants, totaling

approximately \$590 million. Only California and New York have put more into the small business community than New Jersey.

I applaud the sponsors of this bill for their proactive efforts to assist New Jersey businesses during this critical time. However, the means chosen to do so by this legislation are imprudent and would distract the EDA from its core focus of expeditiously distributing capital and providing other forms of assistance to businesses in need. I look forward to continuing to work closely with my partners in the Legislature to advance additional economic recovery programs to combat the economic turmoil caused by the COVID-19 pandemic.

Accordingly, I herewith return Senate Bill No. 2347 (First Reprint) without my approval.

[seal]

Respectfully,
/s/ Philip D. Murphy
Governor

Attest:

/s/ Parimal Garg
Chief Counsel to the Governor