

112<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 1864

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## AN ACT

To limit the authority of States to tax certain income of employees for employment duties performed in other States.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Mobile Workforce  
3 State Income Tax Simplification Act of 2012”.

4 **SEC. 2. LIMITATIONS ON STATE WITHHOLDING AND TAX-**  
5 **ATION OF EMPLOYEE INCOME.**

6 (a) **IN GENERAL.**—No part of the wages or other re-  
7 munerations earned by an employee who performs employ-  
8 ment duties in more than one State shall be subject to  
9 income tax in any State other than—

10 (1) the State of the employee’s residence; and

11 (2) the State within which the employee is  
12 present and performing employment duties for more  
13 than 30 days during the calendar year in which the  
14 wages or other remuneration is earned.

15 (b) **WAGES OR OTHER REMUNERATION.**—Wages or  
16 other remuneration earned in any calendar year shall not  
17 be subject to State income tax withholding and reporting  
18 requirements unless the employee is subject to income tax  
19 in such State under subsection (a). Income tax with-  
20 holding and reporting requirements under subsection  
21 (a)(2) shall apply to wages or other remuneration earned  
22 as of the commencement date of employment duties in the  
23 State during the calendar year.

24 (c) **OPERATING RULES.**—For purposes of deter-  
25 mining penalties related to an employer’s State income tax  
26 withholding and reporting requirements—

1           (1) an employer may rely on an employee’s an-  
2           nual determination of the time expected to be spent  
3           by such employee in the States in which the em-  
4           ployee will perform duties absent—

5                   (A) the employer’s actual knowledge of  
6           fraud by the employee in making the determina-  
7           tion; or

8                   (B) collusion between the employer and the  
9           employee to evade tax;

10           (2) except as provided in paragraph (3), if  
11           records are maintained by an employer in the reg-  
12           ular course of business that record the location of an  
13           employee, such records shall not preclude an employ-  
14           er’s ability to rely on an employee’s determination  
15           under paragraph (1); and

16           (3) notwithstanding paragraph (2), if an em-  
17           ployer, at its sole discretion, maintains a time and  
18           attendance system that tracks where the employee  
19           performs duties on a daily basis, data from the time  
20           and attendance system shall be used instead of the  
21           employee’s determination under paragraph (1).

22           (d) DEFINITIONS AND SPECIAL RULES.—For pur-  
23           poses of this Act:

24                   (1) DAY.—

1           (A) Except as provided in subparagraph  
2           (B), an employee is considered present and per-  
3           forming employment duties within a State for a  
4           day if the employee performs more of the em-  
5           ployee’s employment duties within such State  
6           than in any other State during a day.

7           (B) If an employee performs employment  
8           duties in a resident State and in only one non-  
9           resident State during one day, such employee  
10          shall be considered to have performed more of  
11          the employee’s employment duties in the non-  
12          resident State than in the resident State for  
13          such day.

14          (C) For purposes of this paragraph, the  
15          portion of the day during which the employee is  
16          in transit shall not be considered in determining  
17          the location of an employee’s performance of  
18          employment duties.

19          (2) EMPLOYEE.—The term “employee” has the  
20          same meaning given to it by the State in which the  
21          employment duties are performed, except that the  
22          term “employee” shall not include a professional  
23          athlete, professional entertainer, or certain public  
24          figures.

1           (3) PROFESSIONAL ATHLETE.—The term “pro-  
2           fessional athlete” means a person who performs  
3           services in a professional athletic event, provided  
4           that the wages or other remuneration are paid to  
5           such person for performing services in his or her ca-  
6           pacity as a professional athlete.

7           (4) PROFESSIONAL ENTERTAINER.—The term  
8           “professional entertainer” means a person who per-  
9           forms services in the professional performing arts  
10          for wages or other remuneration on a per-event  
11          basis, provided that the wages or other remuneration  
12          are paid to such person for performing services in  
13          his or her capacity as a professional entertainer.

14          (5) CERTAIN PUBLIC FIGURES.—The term  
15          “certain public figures” means persons of promi-  
16          nence who perform services for wages or other remu-  
17          neration on a per-event basis, provided that the  
18          wages or other remuneration are paid to such person  
19          for services provided at a discrete event, in the na-  
20          ture of a speech, public appearance, or similar event.

21          (6) EMPLOYER.—The term “employer” has the  
22          meaning given such term in section 3401(d) of the  
23          Internal Revenue Code of 1986 (26 U.S.C. 3401(d)),  
24          unless such term is defined by the State in which

1 the employee's employment duties are performed, in  
2 which case the State's definition shall prevail.

3 (7) STATE.—The term “State” means any of  
4 the several States.

5 (8) TIME AND ATTENDANCE SYSTEM.—The  
6 term “time and attendance system” means a system  
7 in which—

8 (A) the employee is required on a contem-  
9 poraneous basis to record his work location for  
10 every day worked outside of the State in which  
11 the employee's employment duties are primarily  
12 performed; and

13 (B) the system is designed to allow the em-  
14 ployer to allocate the employee's wages for in-  
15 come tax purposes among all States in which  
16 the employee performs employment duties for  
17 such employer.

18 (9) WAGES OR OTHER REMUNERATION.—The  
19 term “wages or other remuneration” may be limited  
20 by the State in which the employment duties are  
21 performed.

22 **SEC. 3. EFFECTIVE DATE; APPLICABILITY.**

23 (a) EFFECTIVE DATE.—This Act shall take effect on  
24 January 1 of the 2d year that begins after the date of  
25 the enactment of this Act.

1 (b) APPLICABILITY.—This Act shall not apply to any  
2 tax obligation that accrues before the effective date of this  
3 Act.

Passed the House of Representatives May 15, 2012.

Attest:

*Clerk.*

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