

110TH CONGRESS
1ST SESSION

H. R. 3359

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

IN THE HOUSE OF REPRESENTATIVES

AUGUST 3, 2007

Mr. JOHNSON of Georgia (for himself and Mr. CANNON) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

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

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Mobile Workforce
5 State Income Tax Fairness and Simplification Act of
6 2007”.

1 **SEC. 2. LIMITATIONS ON STATE AND LOCALITY WITH-**
2 **HOLDING AND TAXATION OF EMPLOYEE IN-**
3 **COME.**

4 (a) IN GENERAL.—No part of the wages or other re-
5 muneration paid to an employee who performs duties in
6 more than one State or locality shall be subject to the in-
7 come tax laws of any State or locality other than—

8 (1) the State or locality of the employee’s resi-
9 dence; and

10 (2) the State or locality in which the employee
11 is physically present performing duties for more
12 than 60 days during the calendar year in which the
13 income is taxed.

14 (b) WAGES OR OTHER REMUNERATION.—Wages or
15 other remuneration paid in any calendar year are not sub-
16 ject to State or locality income tax withholding and report-
17 ing unless the employee is subject to income tax under
18 subsection (a). Income tax withholding and reporting
19 under subsection (a)(2) shall apply to wages or other re-
20 muneration paid as of the commencement date of duties
21 in the State or locality during the calendar year.

22 (c) OPERATING RULES.—For purposes of deter-
23 mining an employer’s State income tax withholding and
24 information return obligations—

25 (1) an employer may rely on an employee’s de-
26 termination of the time expected to be spent by such

1 employee in the States or localities in which the em-
2 ployee will perform duties absent—

3 (A) actual knowledge of fraud by the em-
4 ployee in making the estimate; or

5 (B) collusion between the employer and the
6 employee to evade tax;

7 (2) if records are maintained by an employer
8 recording the location of an employee for other busi-
9 ness purposes, such records shall not preclude an
10 employer's ability to rely on an employee's deter-
11 mination as set forth in paragraph (1); and

12 (3) notwithstanding paragraph (2), if an em-
13 ployer, at its sole discretion, maintains a time and
14 attendance system which tracks where the employee
15 performs duties on a daily basis, data from the time
16 and attendance system shall be used instead of the
17 employee's determination as set forth in paragraph
18 (1).

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

21 (1) DAY.—An employee will be considered phys-
22 ically present and performing duties in a State or lo-
23 cality for a day if the employee performs more than
24 50 percent of the employee's employment duties in
25 such State or locality for such day.

1 (2) EMPLOYEE.—The term “employee” shall be
2 defined by the State or locality in which the duties
3 are performed, except that the term “employee”
4 shall not include a professional athlete, professional
5 entertainer, or certain public figures.

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

12 (4) PROFESSIONAL ENTERTAINER.—The term
13 “professional entertainer” means a person who per-
14 forms services in the professional performing arts,
15 provided that the wages or other remuneration are
16 paid to such person for performing services in his or
17 her capacity as a professional entertainer.

18 (5) CERTAIN PUBLIC FIGURES.—The term
19 “certain public figures” means persons of national
20 prominence who perform services for wages or other
21 remuneration on a per-event basis, provided that the
22 wages or other remuneration are paid to such person
23 for services provided at a discrete event in the form
24 of a speech, similar presentation or personal appear-
25 ance.

1 (6) EMPLOYER.—The term “employer” has the
2 meaning given such term in section 3401(d) of the
3 Internal Revenue Code of 1986 (26 U.S.C. 3401(d))
4 or shall be defined by the State or locality in which
5 the duties are performed.

6 (7) LOCALITY.—The term “locality” means any
7 political subdivision, agency, or instrumentality of a
8 State.

9 (8) STATE.—The term “State” means each of
10 the several States (or any subdivision thereof), or
11 any territory or possession of the United States.

12 (9) TIME AND ATTENDANCE SYSTEM.—The
13 term “time and attendance system” means a system
14 where the employee on a contemporaneous basis
15 records his work location for every day worked and
16 the employer uses this data to allocate the employ-
17 ee’s wages between all taxing jurisdictions in which
18 the employee performs duties.

19 (10) WAGES OR OTHER REMUNERATION.—The
20 term “wages or other remuneration” shall be defined
21 by the State or locality in which the employment du-
22 ties are performed.

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