

111TH CONGRESS  
1ST SESSION

# H. R. 2110

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

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## IN THE HOUSE OF REPRESENTATIVES

APRIL 27, 2009

Mr. JOHNSON of Georgia (for himself, Mr. JORDAN of Ohio, Mr. GOODLATTE,  
Mr. BUTTERFIELD, and Ms. FOXX) introduced the following bill; which  
was referred to the Committee on the Judiciary

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## A BILL

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,*

3       **SECTION 1. SHORT TITLE.**

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

6       **SEC. 2. LIMITATIONS ON STATE WITHHOLDING AND TAX-**  
7       **ATION OF EMPLOYEE INCOME.**

8       (a) IN GENERAL.—No part of the wages or other re-  
9       muneration earned by an employee who performs employ-

1 ment duties in more than one State shall be subject to  
2 income tax in any State other than—

3 (1) the State of the employee's residence; and

4 (2) the State within which the employee is  
5 present and performing employment duties for more  
6 than 30 days during the calendar year in which the  
7 income is earned.

8 (b) WAGES OR OTHER REMUNERATION.—Wages or  
9 other remuneration earned in any calendar year are not  
10 subject to State income tax withholding and reporting un-  
11 less the employee is subject to income tax under subsection  
12 (a). Income tax withholding and reporting under sub-  
13 section (a)(2) shall apply to wages or other remuneration  
14 earned as of the commencement date of duties in the State  
15 during the calendar year.

16 (c) OPERATING RULES.—For purposes of deter-  
17 mining an employer's State income tax withholding and  
18 information return obligations—

19 (1) an employer may rely on an employee's de-  
20 termination of the time expected to be spent by such  
21 employee in the States in which the employee will  
22 perform duties absent—

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

1 (B) collusion between the employer and the  
2 employee to evade tax;

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

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

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

17 (1) DAY.—

18 (A) An employee will be considered present  
19 and performing employment duties within a  
20 State for a day if the employee performs the  
21 preponderance of the employee's employment  
22 duties within such State for such day.

23 (B) Notwithstanding subsection (d)(1)(A),  
24 if an employee performs material employment  
25 duties in a resident state and one nonresident

1 state during one day, such employee will be con-  
2 sidered to have performed the preponderance of  
3 the employee's employment duties in the non-  
4 resident state for such day.

5 (C) For purposes of subsection (d)(1), the  
6 portion of the day the employee is in transit  
7 shall not apply in determining the location of  
8 an employee's performance of employment du-  
9 ties.

10 (2) EMPLOYEE.—The term “employee” shall be  
11 defined by the State in which the duties are per-  
12 formed, except that the term “employee” shall not  
13 include a professional athlete, professional enter-  
14 tainer, or certain public figures.

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

21 (4) PROFESSIONAL ENTERTAINER.—The term  
22 “professional entertainer” means a person who per-  
23 forms services in the professional performing arts  
24 for wages or other remuneration on a per-event  
25 basis, provided that the wages or other remuneration

1 are paid to such person for performing services in  
2 his or her capacity as a professional entertainer.

3 (5) CERTAIN PUBLIC FIGURES.—The term  
4 “certain public figures” means persons of promi-  
5 nence who perform services for wages or other remu-  
6 nation on a per-event basis, provided that the  
7 wages or other remuneration are paid to such person  
8 for services provided at a discrete event in the form  
9 of a speech, similar presentation or personal appear-  
10 ance.

11 (6) EMPLOYER.—The term “employer” has the  
12 meaning given such term in section 3401(d) of the  
13 Internal Revenue Code of 1986 (26 U.S.C. 3401(d))  
14 or shall be defined by the State in which the duties  
15 are performed.

16 (7) STATE.—The term “State” means each of  
17 the several States of the United States.

18 (8) TIME AND ATTENDANCE SYSTEM.—The  
19 term “time and attendance system” means a system  
20 where the employee is required on a contempora-  
21 neous basis to record his work location for every day  
22 worked outside of the state in which the employee’s  
23 duties are primarily preformed and the employer  
24 uses this data to allocate the employee’s wages be-

1       tween all taxing jurisdictions in which the employee  
2       performs duties.

3           (9) WAGES OR OTHER REMUNERATION.—The  
4       term “wages or other remuneration” shall be defined  
5       by the State in which the employment duties are  
6       performed.

7   **SEC. 3. EFFECTIVE DATE.**

8       This Act shall be effective on January 1, 2011.

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