

112TH CONGRESS
2D SESSION

S. 3485

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

IN THE SENATE OF THE UNITED STATES

AUGUST 2, 2012

Mr. BROWN of Ohio introduced the following bill; which was read twice and referred to the Committee on Finance

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 Simplification Act of 2012”.

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 wages or other remuneration is earned.

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

17 (c) OPERATING RULES.—For purposes of deter-
18 mining penalties related to an employer's State income tax
19 withholding and reporting requirements—

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

1 (A) the employer's actual knowledge of
2 fraud by the employee in making the determina-
3 tion; or

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

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

12 (3) notwithstanding paragraph (2), if an em-
13 ployer, at its sole discretion, maintains a time and
14 attendance system that 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 under paragraph (1).

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

20 (1) DAY.—

21 (A) Except as provided in subparagraph
22 (B), an employee is considered present and per-
23 forming employment duties within a State for a
24 day if the employee performs more of the em-

1 employee's employment duties within such State
2 than in any other State during a day.

3 (B) If an employee performs employment
4 duties in a resident State and in only one non-
5 resident State during one day, such employee
6 shall be considered to have performed more of
7 the employee's employment duties in the non-
8 resident State than in the resident State for
9 such day.

10 (C) For purposes of this paragraph, the
11 portion of the day during which the employee is
12 in transit shall not be considered in determining
13 the location of an employee's performance of
14 employment duties.

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

21 (3) PROFESSIONAL ATHLETE.—The term “pro-
22 fessional athlete” means a person who performs
23 services in a professional athletic event, provided
24 that the wages or other remuneration are paid to

1 such person for performing services in his or her ca-
2 pacity as a professional athlete.

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

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

17 (6) EMPLOYER.—The term “employer” has the
18 meaning given such term in section 3401(d) of the
19 Internal Revenue Code of 1986 (26 U.S.C. 3401(d)),
20 unless such term is defined by the State in which
21 the employee’s employment duties are performed, in
22 which case the State’s definition shall prevail.

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

1 (8) TIME AND ATTENDANCE SYSTEM.—The
 2 term “time and attendance system” means a system
 3 in which—

4 (A) the employee is required on a contem-
 5 poraneous basis to record his work location for
 6 every day worked outside of the State in which
 7 the employee’s employment duties are primarily
 8 performed; and

9 (B) the system is designed to allow the em-
 10 ployer to allocate the employee’s wages for in-
 11 come tax purposes among all States in which
 12 the employee performs employment duties for
 13 such employer.

14 (9) WAGES OR OTHER REMUNERATION.—The
 15 term “wages or other remuneration” may be limited
 16 by the State in which the employment duties are
 17 performed.

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

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

22 (b) APPLICABILITY.—This Act shall not apply to any
 23 tax obligation that accrues before the effective date of this
 24 Act.

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