

115TH CONGRESS
1ST SESSION

S. 540

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

MARCH 7, 2017

Mr. THUNE (for himself, Mr. BROWN, Mr. ROBERTS, Mr. BLUNT, Mr. BLUMENTHAL, Mr. TILLIS, Mr. BOOKER, Mr. PERDUE, Mr. REED, Mr. HOEVEN, Ms. STABENOW, Mr. BARRASSO, Mrs. MURRAY, Mr. HELLER, Mrs. ERNST, Mr. DONNELLY, Mr. ISAKSON, Ms. HASSAN, and Mr. BOOZMAN) 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 2017”.

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

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

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

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

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

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

24 (1) an employer may rely on an employee's an-
25 nual determination of the time expected to be spent

1 by such employee in the States in which the em-
 2 ployee will perform duties absent—

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

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

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

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

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

22 (1) DAY.—

23 (A) Except as provided in subparagraph

24 (B), an employee is considered present and per-
 25 forming employment duties within a State for a

1 day if the employee performs more of the em-
2 ployee's employment duties within such State
3 than in any other State during a day.

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

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

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

22 (3) PROFESSIONAL ATHLETE.—The term “pro-
23 fessional athlete” means a person who performs
24 services in a professional athletic event, provided
25 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 of promi-
5 nence who performs services in the professional per-
6 forming arts for wages or other remuneration on a
7 per-event basis, provided that the wages or other re-
8 muneration are paid to such person for performing
9 services in his or her capacity as a professional en-
10 tertainer.

11 (5) QUALIFIED PRODUCTION EMPLOYEE.—The
12 term “qualified production employee” means a per-
13 son who performs production services of any nature
14 directly in connection with a State qualified, cer-
15 tified or approved film, television or other commer-
16 cial video production for wages or other remunera-
17 tion, provided that the wages or other remuneration
18 paid to such person are qualified production costs or
19 expenditures under such State’s qualified, certified
20 or approved film incentive program, and that such
21 wages or other remuneration must be subject to
22 withholding under such film incentive program as a
23 condition to treating such wages or other remunera-
24 tion as a qualified production cost or expenditure.

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

8 (7) EMPLOYER.—The term “employer” has the
 9 meaning given such term in section 3401(d) of the
 10 Internal Revenue Code of 1986 (26 U.S.C. 3401(d)),
 11 unless such term is defined by the State in which
 12 the employee’s employment duties are performed, in
 13 which case the State’s definition shall prevail.

14 (8) STATE.—The term “State” means any of
 15 the several States.

16 (9) TIME AND ATTENDANCE SYSTEM.—The
 17 term “time and attendance system” means a system
 18 in which—

19 (A) the employee is required on a contem-
 20 poraneous basis to record his work location for
 21 every day worked outside of the State in which
 22 the employee’s employment duties are primarily
 23 performed; and

24 (B) the system is designed to allow the em-
 25 ployer to allocate the employee’s wages for in-

1 come tax purposes among all States in which
2 the employee performs employment duties for
3 such employer.

4 (10) WAGES OR OTHER REMUNERATION.—The
5 term “wages or other remuneration” may be limited
6 by the State in which the employment duties are
7 performed.

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

9 (a) EFFECTIVE DATE.—This Act shall take effect on
10 January 1 of the second calendar year that begins after
11 the date of the enactment of this Act.

12 (b) APPLICABILITY.—This Act shall not apply to any
13 tax obligation that accrues before the effective date of this
14 Act.

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