

EMPLOYING AND FEEDING  
AMERICA

(Mr. JOHNSON of Ohio asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. JOHNSON of Ohio. Mr. Speaker, growing up on that two-wheel wagon rut mule farm, I learned firsthand the critical role that America's farmers and ranchers play in our economy. And on the 150th anniversary of the United States Department of Agriculture, we are reminded that the average farmer in the United States feeds more than 150 people worldwide, creating countless jobs along the way.

Just think about where your bowl of cereal, your toast, and your pancakes came from this morning. The grain was planted, raised, harvested and sold, then bought, produced, marketed, and sold to you for your morning meal. Think about all those jobs that originated from one planted seed.

As the world's second largest producer and the largest exporter of agricultural products, a robust agriculture industry is critical to America's economic success. Today, I honor and thank America's farmers and ranchers who feed the world while putting America to work. And I commend the USDA on its anniversary for helping them do so.

COMMUNICATION FROM THE HONORABLE  
DARRELL ISSA, MEMBER OF CONGRESS

The SPEAKER pro tempore (Mr. BISHOP of Utah) laid before the House the following communication from the Honorable DARRELL ISSA, Member of Congress:

HOUSE OF REPRESENTATIVES,  
Washington, DC, May 7, 2012.

Hon. JOHN A. BOEHNER,  
Speaker, House of Representatives,  
Washington, DC.

DEAR MR. SPEAKER: This is to notify you formally pursuant to Rule VIII of the Rules of the House of Representatives that I have been served with a subpoena, issued by the United States District Court for the District of Columbia, for trial testimony.

After consultation with the Office of General Counsel, I will make the determinations required by Rule VIII.

Sincerely,

DARRELL ISSA,  
Member of Congress.

COMMUNICATION FROM CHAIR OF  
COMMITTEE ON OVERSIGHT AND  
GOVERNMENT REFORM

The SPEAKER pro tempore laid before the House the following communication from the chair of the Committee on Oversight and Government Reform:

HOUSE OF REPRESENTATIVES, COM-  
MITTEE ON OVERSIGHT AND GOV-  
ERNMENT REFORM,

Washington, DC, May 10, 2012.

Hon. JOHN A. BOEHNER,  
Speaker, House of Representatives,  
The Capitol, Washington, DC.

DEAR MR. SPEAKER: This is to notify you formally pursuant to Rule VIII of the Rules

of the House of Representatives that the Committee on Oversight and Government Reform has been served with a subpoena, issued by the United States District Court for the District of Columbia, for documents.

After consultation with the Office of General Counsel, I will make the determinations required by Rule VIII.

Sincerely,

DARRELL ISSA,  
Chairman, Committee on Oversight  
and Government Reform.

COMMUNICATION FROM THE  
CLERK OF THE HOUSE

The SPEAKER pro tempore laid before the House the following communication from the Clerk of the House of Representatives:

OFFICE OF THE CLERK,  
HOUSE OF REPRESENTATIVES,  
Washington, DC, May 14, 2012.

Hon. JOHN A. BOEHNER,  
The Speaker, U.S. Capitol, House of Representa-  
tives, Washington, DC.

DEAR MR. SPEAKER: Pursuant to the permission granted in Clause 2(h) of Rule II of the Rules of the U.S. House of Representatives, the Clerk received the following message from the Secretary of the Senate on May 14, 2012 at 1:34 p.m.:

That the Senate passed without amend-  
ment H.R. 4967.

That the Senate passed S. 418.

With best wishes, I am

Sincerely,

KAREN L. HAAS.

## RECESS

The SPEAKER pro tempore. Pursuant to clause 12(a) of rule I, the Chair declares the House in recess until approximately 4 p.m. today.

Accordingly (at 2 o'clock and 14 minutes p.m.), the House stood in recess.

□ 1606

## AFTER RECESS

The recess having expired, the House was called to order by the Speaker pro tempore (Mr. SMITH of Texas) at 4 o'clock and 6 minutes p.m.

ANNOUNCEMENT BY THE SPEAKER  
PRO TEMPORE

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX, the Chair will postpone further proceedings today on motions to suspend the rules on which a recorded vote or the yeas and nays are ordered, or on which the vote incurs objection under clause 6 of rule XX.

Record votes on postponed questions will be taken later.

MOBILE WORKFORCE STATE IN-  
COME TAX SIMPLIFICATION ACT  
OF 2012

Mr. COBLE. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 1864) to limit the authority of States to tax certain income of employees for employment duties performed in other States, as amended.

The Clerk read the title of the bill.  
The text of the bill is as follows:

H.R. 1864

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

## SECTION 1. SHORT TITLE.

This Act may be cited as the "Mobile Workforce State Income Tax Simplification Act of 2012".

SEC. 2. LIMITATIONS ON STATE WITHHOLDING  
AND TAXATION OF EMPLOYEE IN-  
COME.

(a) IN GENERAL.—No part of the wages or other remuneration earned by an employee who performs employment duties in more than one State shall be subject to income tax in any State other than—

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

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

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

(c) OPERATING RULES.—For purposes of determining penalties related to an employer's State income tax withholding and reporting requirements—

(1) an employer may rely on an employee's annual determination of the time expected to be spent by such employee in the States in which the employee will perform duties absent—

(A) the employer's actual knowledge of fraud by the employee in making the determination; or

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

(2) except as provided in paragraph (3), if records are maintained by an employer in the regular course of business that record the location of an employee, such records shall not preclude an employer's ability to rely on an employee's determination under paragraph (1); and

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

(d) DEFINITIONS AND SPECIAL RULES.—For purposes of this Act:

(1) DAY.—

(A) Except as provided in subparagraph (B), an employee is considered present and performing employment duties within a State for a day if the employee performs more of the employee's employment duties within such State than in any other State during a day.

(B) If an employee performs employment duties in a resident State and in only one nonresident State during one day, such employee shall be considered to have performed more of the employee's employment duties in the nonresident State than in the resident State for such day.

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

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

(3) **PROFESSIONAL ATHLETE.**—The term “professional athlete” means a person who performs services in a professional athletic event, provided that the wages or other remuneration are paid to such person for performing services in his or her capacity as a professional athlete.

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

(5) **CERTAIN PUBLIC FIGURES.**—The term “certain public figures” means persons of prominence who perform services for wages or other remuneration on a per-event basis, provided that the wages or other remuneration are paid to such person for services provided at a discrete event, in the nature of a speech, public appearance, or similar event.

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

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

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

(A) the employee is required on a contemporaneous basis to record his work location for every day worked outside of the State in which the employee's employment duties are primarily performed; and

(B) the system is designed to allow the employer to allocate the employee's wages for income tax purposes among all States in which the employee performs employment duties for such employer.

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

#### SEC. 3. EFFECTIVE DATE; APPLICABILITY.

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

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

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from North Carolina (Mr. COBLE) and the gentleman from Georgia (Mr. JOHNSON) each will control 20 minutes.

The Chair recognizes the gentleman from North Carolina.

#### GENERAL LEAVE

Mr. COBLE. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include extraneous materials on H.R. 1864, as amended, currently under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from North Carolina?

There was no objection.

Mr. COBLE. I yield myself such time as I may consume.

Mr. Speaker, I rise in support of H.R. 1864.

On the way back to Washington, D.C., this past weekend, I looked around in my local airport and saw dozens of business travelers preparing to board airplanes to leave North Carolina and conduct business in other States. This happens, Mr. Speaker, every day in every State in America. The American workforce is more mobile in the 21st century than it has ever been.

Nonetheless, the diversity of State income tax laws places a significant burden on people who travel for work and their employers, many of which are small businesses. Currently, 41 States tax the wages earned by a nonresident for work performed there. I do not take issue with the right of those States to impose an income tax, but I am concerned that the disparity of tax rules among those States is damaging small businesses and stifling economic growth.

□ 1610

For example, some States require a nonresident to pay income tax if he or she works in that State for just one day. Other states do not collect tax until the nonresident works for a certain number of days in the particular jurisdiction. Small businesses must expend considerable resources to figure out how much they must withhold for their traveling employees in 41 different jurisdictions. Employees are also confused about when their tax liability is triggered and in which States they must file a tax return.

To alleviate this problem, on May 12 I introduced H.R. 1864, the Mobile Workforce State Income Tax Simplification Act, with the distinguished gentleman from Georgia (Mr. JOHNSON). The bill we introduced establishes a clear 30-day threshold for tax liability and employer withholding. Under the bill, States remain free to set any income tax rate they choose.

Tax simplification—on both the Federal and State level—will allow workers and employers to predict their tax liabilities with accuracy and expend fewer resources researching the nuances of each State's respective tax law. The money they would have spent hiring accountants and tax lawyers can then be spent on creating meaningful jobs and growing the economy.

I urge all Members to cast a “yes” vote on this bill, and I reserve the balance of my time.

Mr. JOHNSON of Georgia. Mr. Speaker, I yield myself such time as I may consume.

I rise today in strong support of H.R. 1864, the Mobile Workforce State Income Tax Simplification Act. This is an important bipartisan bill that will help all workers across the country. It will also help businesses, large and small.

I have been working on this bill since I was a freshman in the 110th Congress, at which time Chris Cannon from Utah, a former Member, was the lead sponsor. In the 111th Congress, I was the lead

sponsor on H.R. 1864 as it is known now. This term, the 112th Congress, Mr. COBLE, whom I have been quite pleased to work with, has been the lead sponsor. Again, he is a good friend of mine, and I appreciate the opportunity to work with him.

H.R. 1864 provides for a uniform and easily administered law that would ensure the correct amount of taxes withheld and paid to the States without the undue burden the current system places on employees and employers. From a national perspective, the Mobile Workforce bill will vastly simplify the patchwork of inconsistent and confusing State rules. It would also reduce administrative costs to States and lessen compliance burdens on American workers.

Take my home State of Georgia, for instance. If an Atlanta-based employee of a St. Louis company travels to headquarters on a business trip once per year, that employee is required to file a Missouri tax return, even if her annual visit only lasts for 1 day. However, if that employee travels to Maine, she would not be required to file a Maine tax return unless her trips lasts for 10 days. If she travels to Arizona on business, she would only have to file an Arizona income tax return if she was in the State for more than 60 days.

In each case, her employer is also liable for withholding those States' taxes out of her paycheck, and the only way she can avoid double taxation is if she files for a credit for each State's tax in her resident State.

H.R. 1864 would fix this problem by establishing a uniform threshold before State income tax laws would apply to traveling employees. This bill would protect employees who perform employment duties in a nonresident State if they work in the State for less than 30 days. Until that threshold is reached, they will continue to pay in their State of residency.

When I initially started working on this bill, the withholding threshold was 60 days. In response to the concerns by the Federation of Tax Administrators, I sought a compromise and lowered the threshold to 30 days. I understand that the FTA may still have some concerns about the bill, but I believe that it is a good bill that addresses the bulk of their concerns. The FTA's concerns have certainly not been ignored.

In addition to lowering the day threshold, we also worked to clarify that the bill's operating rules were not drafted to avoid paying withholding tax, and clarified if an employer has a time and attendance system designed to allocate wages among States, it must be used.

At a time when more and more Americans find themselves traveling for their job, this bill is a common-sense solution that helps workers who are employed in multiple States by simplifying the tax reporting requirements for them and for their employers.

Madam Speaker, for the vast majority of States, this bill carries a minimal or no revenue impact. In fact, this bill will greatly increase compliance rates. This bill will end up saving States the administrative costs of processing and remitting thousands of small returns from nonresidents.

While nothing is perfect, and the Federation of Tax Administrators may still have some concerns, this bill is truly the product of years of working with the States on an approach that balances their concerns with administrative ease and efficiency for employers and employees. This is truly a bipartisan effort that seeks to simplify State tax compliance, not reduce State taxes.

I yield back the balance of my time.

Mr. COBLE. Madam Speaker, I urge my colleagues to cast a "yes" vote on this matter, and I yield back the balance of my time.

Mr. SMITH of Texas. Madam Speaker, the American workforce is increasingly mobile. Fifty years ago, most people worked in the communities in which they lived. Today, many more Americans travel to other states for work.

The complexity and variation among state income tax laws is a burden on interstate commerce. In some states, for example, a non-resident employee must pay income tax if they work there for only one day. But in other states, income tax liability is not triggered until the 60th day.

Under this current patchwork system, employees who travel out of state for work must file tax returns in other jurisdictions even if their ultimate tax liability to a state is a few dollars.

In addition to burdening our interstate employees, different state income tax laws require employers to comply with a wide variety of tax withholding laws. Many of those employers are small businesses who can least afford these administrative costs.

This bipartisan bill, the Mobile Workforce State Income Tax Simplification Act, is sponsored by the Chairman of the Judiciary Committee's Subcommittee on Courts, Commercial and Administrative Law, HOWARD COBLE. I also appreciate Congressman HANK JOHNSON's cosponsorship of this legislation.

This bill simplifies state income tax policies without infringing on the rights of states to set their own tax rates. The bill provides that a state may not impose its income tax on non-resident employees unless they earn wages in the state for more than 30 days. The employee would still owe an income tax to their state of residence for wages earned during the first 30 days they work in a non-resident state.

This bill eases the burden that the current patchwork of state income tax laws places on traveling employees and small businesses. So rather than increasing the expense of navigating the maze of tax rules, businesses can use their resources to invest in creating jobs for American workers.

Finally, the bill we consider today reflects a few changes that were made at the request of state taxing authorities. I am pleased that the sponsors of the legislation were able to work cooperatively with all interested parties to bring a compromise version to the floor.

I encourage my colleagues to vote "yes" on the bill.

Ms. JACKSON LEE of Texas. Madam Speaker, I rise in strong support of H.R. 1864, The Mobile Workforce State Income Tax Simplification Act of 2011. This is a common-sense, bipartisan piece of legislation.

Every day millions of American workers travel outside their home state for business purposes. Each state into which they travel has its own set of unique requirements for filing a non-resident personal income tax return. As a result, in addition to filing a federal and any applicable home state income tax returns, these workers may be legally required to file an income tax return and pay non-resident state taxes in virtually every other state into which they have travelled.

H.R. 1864, the "Mobile Workforce State Income Tax Simplification Act of 2011," would simplify the onerous burdens placed on employees who travel outside their resident states for temporary periods and on employers who have corresponding withholding requirements. The bill would establish fair, administrable and uniform rules to ensure that the appropriate amount of tax is paid to state and local jurisdictions without placing excessive burdens on employees and their employers.

This bill was reported out of the Judiciary Committee, by a bipartisan voice vote, which speaks volumes. I hope you will join me in supporting this important legislation impacting millions of American employees who travel for work to support their families.

Forty-one states currently impose a personal income tax on income earned within their borders regardless of whether an individual is a resident of the state—thereby requiring non-resident employees who must travel to other states for work purposes to pay tax after performing work there for even a limited amount of time. Employers are required to withhold that state's income tax on behalf of the employee and remit it to the state at the end of the year.

The committee notes that while some states require an employer to withhold income tax on the first day of the employee's travel, others use a hybrid system of time spent and dollars earned to trigger withholding, requiring individuals who travel for work to track and comply with the income tax laws of up to 41 different states. For instance, a nonresident's income tax liability is triggered in New York the moment he or she earns wages in the state, but the employer's withholding requirement is not triggered until the 14th day of wage-earning. In Idaho, meanwhile, a non-resident's income tax liability is not triggered until after he or she makes \$1,000 in wages in the state.

I note that some committee Democrats oppose the bill because they fear it will lead to severe state revenue losses but believe that this is a solid bi-partisan piece of legislation.

This bill limits the authority of states to tax the income of nonresident employees who work for a limited amount of time in the state, allowing such individuals to be taxed only if they work in the state for 31 days or more.

Those limits would become effective on January 1 of the second year that begins after the bill's date of enactment, and it would not apply to any tax obligation that accrues before that time.

The bill prohibits states from taxing the wages or other earnings of non-residents unless they work in the state for 31 days or more during the calendar year. Similarly, states could not subject such income to state income

tax withholding and reporting requirements, unless more than 30 days of work was performed.

Under the measure, an individual is considered to be present and performing employment duties within a state for a day if that individual performs more of his or her work within that state than in any other state during the day. If an individual works during one day both in his or her resident state and in just one non-resident state, the individual would be considered to have performed more of his or her employment duties in the non-resident state. Portions of the day during which an individual is in transit would not be considered in determining the location of where work was performed.

The bill provides that for purposes of determining state income tax withholding and reporting requirements, an employer could rely on an employee's determination of the time expected to be spent working for the employer in other non-resident states (absent the employer's actual knowledge of fraud by the employee in making the determination, or collusion between the employer and the employee to evade tax).

Employers could rely on an employee's determination even if the employer regularly maintains records of the location of employees, but if the employer maintains a time and attendance system that tracks where an employee works on a daily basis the data from the time and attendance system must be used instead of the employee's determination.

The bill stipulates that the term "employee" has the same meaning given to it by the state in which employment duties are performed—except the term would not include professional athletes, professional entertainers or certain public figures. States could, therefore, continue to tax those non-residents as they do now.

I urge my colleagues to join me in supporting this bill.

The SPEAKER pro tempore (Ms. FOXX). The question is on the motion offered by the gentleman from North Carolina (Mr. COBLE) that the House suspend the rules and pass the bill, H.R. 1864, as amended.

The question was taken; and (two-thirds being in the affirmative) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

#### BORDER TUNNEL PREVENTION ACT OF 2012

Mr. SMITH of Texas. Madam Speaker, I move to suspend the rules and pass the bill (H.R. 4119) to reduce the trafficking of drugs and to prevent human smuggling across the Southwest Border by deterring the construction and use of border tunnels, as amended.

The Clerk read the title of the bill.

The text of the bill is as follows:

H.R. 4119

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

#### SECTION 1. SHORT TITLE.

This Act may be cited as the "Border Tunnel Prevention Act of 2012".