

Union Calendar No. 264

112TH CONGRESS
2^D SESSION

H. R. 1864

[Report No. 112-386]

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

IN THE HOUSE OF REPRESENTATIVES

MAY 12, 2011

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

FEBRUARY 3, 2012

Additional sponsors: Mr. FRANKS of Arizona, Mr. ROSS of Florida, Mr. GOWDY, Mr. CHAFFETZ, Mr. SESSIONS, Mr. BOREN, Mr. CRENSHAW, Mr. ROONEY, Mr. JORDAN, Mr. QUAYLE, Mr. FORBES, and Ms. JACKSON LEE of Texas

FEBRUARY 3, 2012

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in *italic*]

[For text of the introduced bill, see bill as introduced on May 12, 2011]

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 State*
5 *Income Tax Simplification Act of 2011”.*

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 remu-*
9 *neration earned by an employee who performs employment*
10 *duties in more than one State shall be subject to income*
11 *tax in any State other than—*

12 *(1) the State of the employee’s residence; and*

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

17 *(b) WAGES OR OTHER REMUNERATION.—Wages or*
18 *other remuneration earned in any calendar year shall not*
19 *be subject to State income tax withholding and reporting*
20 *requirements unless the employee is subject to income tax*
21 *in such State under subsection (a). Income tax withholding*
22 *and reporting requirements under subsection (a)(2) shall*
23 *apply to wages or other remuneration earned as of the com-*
24 *mencement date of employment duties in the State during*
25 *the calendar year.*

1 (c) *OPERATING RULES.*—*For purposes of determining*
2 *an employer’s State income tax withholding and reporting*
3 *requirements—*

4 (1) *an employer may rely on an employee’s de-*
5 *termination of the time expected to be spent by such*
6 *employee in the States in which the employee will*
7 *perform duties absent—*

8 (A) *the employer’s actual knowledge of*
9 *fraud by the employee in making the determina-*
10 *tion; or*

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

13 (2) *except as provided in paragraph (3), if*
14 *records are maintained by an employer in the regular*
15 *course of business that record the location of an em-*
16 *ployee, such records shall not preclude an employer’s*
17 *ability to rely on an employee’s determination under*
18 *paragraph (1); and*

19 (3) *notwithstanding paragraph (2), if an em-*
20 *ployer, at its sole discretion, maintains a time and*
21 *attendance system that tracks where the employee per-*
22 *forms duties on a daily basis, data from the time and*
23 *attendance system shall be used instead of the employ-*
24 *ee’s determination under paragraph (1).*

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

3 (1) *DAY.*—

4 (A) *Except as provided in subparagraph*
5 *(B), an employee is considered present and per-*
6 *forming employment duties within a State for a*
7 *day if the employee performs more of the employ-*
8 *ee’s employment duties within such State than*
9 *in any other State during a day.*

10 (B) *If an employee performs employment*
11 *duties in a resident State and in only one non-*
12 *resident State during one day, such employee*
13 *shall be considered to have performed more of the*
14 *employee’s employment duties in the nonresident*
15 *State than in the resident State for such day.*

16 (C) *For purposes of this paragraph, the*
17 *portion of the day during which the employee is*
18 *in transit shall not be considered in determining*
19 *the location of an employee’s performance of em-*
20 *ployment duties.*

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

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

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

14 (5) *CERTAIN PUBLIC FIGURES.*—*The term “cer-*
15 *tain public figures” means persons of prominence who*
16 *perform services for wages or other remuneration on*
17 *a per-event basis, provided that the wages or other re-*
18 *muneration are paid to such person for services pro-*
19 *vided at a discrete event, in the nature of a speech,*
20 *public appearance, or similar event.*

21 (6) *EMPLOYER.*—*The term “employer” has the*
22 *meaning given such term in section 3401(d) of the In-*
23 *ternal Revenue Code of 1986 (26 U.S.C. 3401(d)), un-*
24 *less such term is defined by the State in which the*

1 *employee’s employment duties are performed, in*
2 *which case the State’s definition shall prevail.*

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

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

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

13 (B) *the employer uses this data to allocate*
14 *the employee’s wages for income tax purposes*
15 *among all States in which the employee performs*
16 *employment duties for such employer.*

17 (9) *WAGES OR OTHER REMUNERATION.*—*The*
18 *term “wages or other remuneration” may be limited*
19 *by the State in which the employment duties are per-*
20 *formed.*

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

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

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

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