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REPORT
114–780

MOBILE WORKFORCE STATE INCOME TAX SIMPLIFICATION ACT OF 2015

SEPTEMBER 21, 2016.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. GOODLATTE, from the Committee on the Judiciary, submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 2315]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 2315) to limit the authority of States to tax certain income of employees for employment duties performed in other States, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

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59–006

Purpose and Summary

The Mobile Workforce Act provides a clear, uniform framework for when States may tax nonresident employees who travel to the taxing State to perform work. In particular, the bill prevents States from imposing income tax compliance burdens on nonresidents who work in a foreign state for fewer than 30 days in a year.

Background and Need for the Legislation

Forty-three States and the District of Columbia levy a personal income tax on wages and partnership income.[1] The State tax laws that determine when a nonresident must pay a foreign state's income tax, and when employers must withhold this tax, are numerous and varied.[2] Some have a days worked in-state threshold. For example, for 2014, a nonresident is subject to tax after working 59 days in Arizona, 15 days in New Mexico, and 14 days in Connecticut.[3] Others have a *de minimis* exception to employer withholding requirements based on wages earned. That threshold is $1,500 in Wisconsin, $1,000 in Idaho, $800 in South Carolina, and $300 a quarter in Oklahoma.[4] Additional States with withholding thresholds include Georgia, Hawaii, Maine, New Jersey, New York, North Dakota, Oregon, Utah, Virginia, and West Virginia. Some State thresholds are tied to personal exemption, standard deduction or filing thresholds that can change each year. The remainder of relevant States tax income earned within their borders by nonresidents, even if the employee only works in the State for 1 day. Examples include New York, even though the State obligates employers to withhold wages only after 14 days.[5]

Some of these States exempt particular activities, such as training or professional development. Yet these exemptions will sometimes cover only the withholding requirement. The employee may still be required to file.

These complicated rules impact everyone who travels for work and many industries including the retail, manufacturing, real estate, technology, food, services, and consulting industries. At the Subcommittee on Regulatory Reform, Commercial and Antitrust Law's 2014 hearing, a West Virginia tax practitioner described the burden on his construction and electrical linemen clients who travel frequently for short-term projects. He reported filing income tax returns in as many as 10 different States in a year for these workers.[6] At the Subcommittee's 2015 hearing, a building products company executive testified that the patchwork of laws resulted in the company issuing fifty W 2's to a single employee for a single year. The executive also noted, regarding the compliance burden, that

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[1] *Mobile Workforce State Income Tax Simplification Act of 2011: Hearing on H.R. 1864 Before Subcomm. on Courts, Commercial & Admin. Law of the H. Comm. on the Judiciary,* 112th Cong. (2011) [hereinafter the "2011 Hearing"] (testimony of Jeffrey A. Porter, Owner, Porter & Associates, CPAs, on behalf of the American Institute of Certified Public Accountants).

[2] *Id.*

[3] *Mobile Workforce State Income Tax Simplification Act of 2013: Hearing on H.R. 1129 Before Subcomm. on Regulatory Reform, Commercial and Antirust Law of the H. Comm. on the Judiciary,* 113th Cong. 33 39 (2014) (statement of Jeffrey A. Porter, Owner, Porter & Associates, CPAs, on behalf of the American Institute of Certified Public Accountants).

[4] *Id.*

[5] New York State Department of Taxation and Finance, *Withholding on Wages Paid to Certain Nonresidents Who Work 14 Days or Fewer in New York State* (July 2012) (available at http://www.tax.ny.gov/pdf/memos/income/m12_5i.pdf).

[6] Porter, s*upra* note 3.

"many of our affected employees make less than $50,000 per year and have limited resources to seek professional advice." [7]

States generally allow a credit for income taxes paid to another State. However, it is not always dollar-for-dollar when local taxes are factored in. Furthermore, such credits provide no relief to residents of the nine States that do not impose income taxes. Such individuals have been found to bear an overall tax burden comparable to residents of States that do impose State income taxes, and thus are effectively subject to double taxation.[8]

There are substantial burdens on employers as well. For example, they must determine whether to withhold for a nonresident working in a particular State, which can be complicated. For example, Georgia has a three-part test looking at whether an employee has worked there for 23 days in a calendar quarter, whether more than 5 percent of the employee's income is attributable to work in Georgia or whether the employee has received remuneration for services in Georgia that exceeds $5000.[9]

Temporary work assignments also require the employer to register for a withholding account, which can be "just as burdensome as trying to manage the tax itself." [10] Employers must track employees' work locations and time spent, which is often a manual process.

Large businesses may have more resources, but they are also more tightly regulated. The Sarbanes-Oxley Act of 2002 requires management to sign-off on the internal controls that ensure State tax compliance and requires auditors to certify management's assessment.[11] The diversity of State income tax laws requires public companies and their auditors to invest a significant amount of time ensuring that the company has withheld correctly for each employee, at great expense to the firm.[12]

In short, as a witness told the Subcommittee in 2014, "[b]usinesses, including small businesses and family businesses, that operate interstate are subject to significant regulatory burdens with regard to compliance with nonresident State income tax withholding laws." [13] These burdens raise costs, which are typically passed on to customers.

The result is a significant burden on interstate commerce. Professor Walter Hellerstein testified in 2007 that States have a legitimate interest in assuring that workers earning income in a State "pay their fair share . . . for the benefits and protections that the State provides." However, that interest "has to be balanced against the burdens that are imposed on multi-state enterprises and on the

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[7] *Mobile Workforce State Income Tax Simplification Act of 2015: Hearing on H.R. 2315 Before Subcomm. on Regulatory Reform, Commercial and Antitrust Law of the H. Comm. on the Judiciary,* 114th Cong. 1 5 (2015) (written testimony of Lawrence F. Leaman, Vice President of Taxes, Masco Corporation).

[8] *Mobile Workforce State Income Tax Simplification Act of 2013: Hearing on H.R. 1129 Before Subcomm. on Regulatory Reform, Commercial and Antirust Law of the H. Comm. on the Judiciary,* 113th Cong. 42 72 (2014) (statement of Lori Brown, CPP, Director, Disbursements CACI International, Inc.).

[9] Porter, *supra* note 3.

[10] Brown, *supra* note 8.

[11] Sarbanes-Oxley Act of 2002, Pub. L. 107 204, § 404, 116 Stat. 745, 789 (codified at 15 U.S.C. § 7262) (2002).

[12] *2007 Hearing, supra* note 4, at 10 (statement of Rep. Henry "Hank" Johnson).

[13] *2011 Hearing* at 13 (testimony of Jeffrey A. Porter, Owner, Porter & Associates, CPAs, on behalf of the American Institute of Certified Public Accountants).

conduct of interstate commerce by uncertain, inconsistent, and unreasonable withholding obligations imposed by the State." [14]

HOW THE MOBILE WORKFORCE ACT SIMPLIFIES THE STATE INCOME TAX LAW REGIME

The Mobile Workforce Act would substantially simplify State income tax laws by imposing a uniform standard for nonresident taxation and employer withholding. The bill provides that an employee is not subject to income tax in a nonresident State unless the employee has worked for at least 30 days in that jurisdiction.[15] This threshold is not continuous, so an employee that makes a number of short business trips to a State might still trip it. Once tripped, the withholding obligation is retroactive to the first day worked in the State.

The bill further provides that an employer is not responsible for withholding on behalf of any employee who is not subject to a State income tax as a result of the bill.[16] For purposes of determining penalties related to a failure to report or withhold, employers are entitled to rely on their employees' report of days spent in a nonresident State unless the employer uses a time and attendance system for its employees.[17]

Finally, the bill exempts certain professional athletes, entertainers, and public figures who, because of their prominence, are paid on a per appearance basis. (*i.e.,* they will not receive the 30-day exemption.)[18] The rationale is that individuals like musical performers and professional athletes earn income specifically from playing at a venue in the foreign state. By contrast, even a highly-paid employee's temporary presence in a foreign state is typically incidental to that employee's job.

COUNTERING ASSERTED CONCERNS

State revenue departments that oppose the bill raise several arguments. First, they invoke the source principle that income should be taxed where it is earned. This may be true generally, but this bill deals with bringing uniformity to a small set of *de minimis* exceptions, in order to reduce compliance costs.

Indeed, an analysis from Ernst & Young, LLP, offered as testimony in the 111th Congress, found that the bill's revenue impact is minimal. In particular, it predicted a net revenue change nationwide for States of merely one hundredth of 1 percent (.01%), which translates into a $42 million overall reduction in personal income taxes.[19] A July 9, 2015 update to that analysis found nearly identical results.[20] This seems reasonable, since for every nonresident whose income tax a State loses, the State gains from not having

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[14] *2007 Hearing, supra* note 4, at 71 (statement of Walter Hellerstein, Francis Shackelford Distinguished Professor of Taxation Law, University of Georgia School of Law).

[15] Mobile Workforce State Income Tax Simplification Act of 2015, H.R. 2315 § 2(a), 114th Congress (2015).

[16] *Id.* § 2(b).

[17] *Id.* § 2(c).

[18] *Id.* § 2(d)(2).

[19] *Mobile Workforce State Income Tax Simplification Act of 2013: Hearing on H.R. 1129 Before Subcomm. on Regulatory Reform, Commercial and Antirust Law of the H. Comm. on the Judiciary,* 113th Cong. 14 30 (2014) (statement Maureen B. Riehl Vice President, Government Affairs Council On State Taxation (COST)).

[20] Ernst & Young LLP, *Estimates of State-By-State Impacts of The Mobile Workforce State Income Tax Fairness And Simplification Act Prepared for The State Tax Research Institute* (Jul. 9, 2015) (available at http://www.cost.org/WorkArea/DownloadAsset.aspx?id=90612).

to provide a credit to in-state residents who temporarily work and therefore currently pay taxes out of State. The result should approximately be a wash. The benefit is in reducing complexity and compliance burdens.

Opponents cite an industry estimate that New York will lose between $50 and $100 million. But the bill does not significantly alter the overall amount of income tax collected. The size of the pot remains the same. It is merely the apportionment that differs, which is appropriate in order to reduce compliance burdens and retain sensible limits on State regulatory authority over nonresidents.

It is also true that approximately one-third of the States have entered into reciprocity agreements not to tax each other's border-state residents' wages. But this still leaves two-thirds of the country not covered, and the existing agreements are geared toward regular commuters living on State borders, rather than workers traveling to multiple locations for temporary work.

At previous Subcommittee hearings, witnesses representing State revenue departments, have raised a number of arguments centered on potential fraud and gaming of the system.[21] For example, they object to provisions permitting employers to rely on employees' estimates of time spent in other jurisdictions. They term this "voluntary reporting" that has not been effective in the income tax enforcement context. However, this allowance is made only for purposes of calculating employer penalties, not for determining the amount actually owed.[22]

More importantly, unlike in the general income tax context, there is little motive here for fraud or gaming. The amount of money at issue (taxes on less than thirty day's wages) is minimal. Second, except in nine States, the employee will have to pay the tax anyway to that employee's home State, so the only savings would be from minor rate differentials between the two jurisdictions.

Hearings

The Committee on the Judiciary's Subcommittee on Regulatory Reform, Commercial, and Antitrust Law held 1 day of hearings on H.R. 2315 and related bills H.R. 1643 and H.R. 2584 on June 2, 2015. Testimony was received from Mr. Grover Norquist, President, Americans for Tax Reform; Mr. Douglas L. Lindholm, CEO & Executive Director of the Council on State Taxation; Mr. Lawrence F. Leaman, Vice President—Taxes, Masco Corporation; Ms. Julie P. Magee, Commissioner, Alabama Department of Revenue; and Mr. Dan L. Crippen, Executive Director, National Governors Association.

Committee Consideration

On June 17, 2015, the Committee met in open session and ordered the bill H.R. 2315 favorably reported, without amendment, by a rollcall vote of 23 to 4, a quorum being present.

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[21] *Mobile Workforce State Income Tax Simplification Act of 2013: Hearing on H.R. 1129 Before Subcomm. on Regulatory Reform, Commercial and Antirust Law of the H. Comm. on the Judiciary,* 113th Cong. 75 82 (2014) (Patrick Carter Director, Division of Revenue for the State of Delaware).

[22] Mobile Workforce State Income Tax Simplification Act of 2015, H.R. 2315 § 2(c), 114th Congress (2015).

Committee Votes

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the Committee advises that the following rollcall votes occurred during the Committee's consideration of H.R. 2315:

1. Amendment #1, offered by Mr. Nadler and Mr. Jeffries. The Amendment lowers the threshold from 30 days to 14 before a State can tax the income of a nonresident temporarily working in a foreign state. The amendment was defeated by a rollcall vote of 7 to 21.

ROLLCALL NO. 1

	Ayes	Nays	Present
Mr. Goodlatte (VA), Chairman		X	
Mr. Sensenbrenner, Jr. (WI)			
Mr. Smith (TX)			
Mr. Chabot (OH)		X	
Mr. Issa (CA)		X	
Mr. Forbes (VA)			
Mr. King (IA)		X	
Mr. Franks (AZ)			
Mr. Gohmert (TX)		X	
Mr. Jordan (OH)		X	
Mr. Poe (TX)		X	
Mr. Chaffetz (UT)		X	
Mr. Marino (PA)		X	
Mr. Gowdy (SC)		X	
Mr. Labrador (ID)		X	
Mr. Farenthold (TX)			
Mr. Collins (GA)			
Mr. DeSantis (FL)		X	
Ms. Walters (CA)		X	
Mr. Buck (CO)		X	
Mr. Ratcliffe (TX)		X	
Mr. Trott (MI)		X	
Mr. Bishop (MI)		X	
Mr. Conyers, Jr. (MI), Ranking Member	X		
Mr. Nadler (NY)	X		
Ms. Lofgren (CA)	X		
Ms. Jackson Lee (TX)			
Mr. Cohen (TN)		X	
Mr. Johnson (GA)			
Mr. Pierluisi (PR)		X	
Ms. Chu (CA)	X		
Mr. Deutch (FL)			
Mr. Gutierrez (IL)			
Ms. Bass (CA)	X		
Mr. Richmond (LA)			
Ms. DelBene (WA)		X	
Mr. Jeffries (NY)	X		
Mr. Cicilline (RI)		X	

ROLLCALL NO. 1—Continued

	Ayes	Nays	Present
Mr. Peters (CA)	X		
Total	7	21	

2. Motion to Report H.R. 2315. The bill will provide a uniform framework, including a 30-day threshold, for when States may tax nonresident employees who travel to the taxing State to perform work. The motion was agreed to by a rollcall vote of 23 to 4.

ROLLCALL NO. 2

	Ayes	Nays	Present
Mr. Goodlatte (VA), Chairman	X		
Mr. Sensenbrenner, Jr. (WI)	X		
Mr. Smith (TX)	X		
Mr. Chabot (OH)			
Mr. Issa (CA)	X		
Mr. Forbes (VA)	X		
Mr. King (IA)	X		
Mr. Franks (AZ)			
Mr. Gohmert (TX)	X		
Mr. Jordan (OH)	X		
Mr. Poe (TX)	X		
Mr. Chaffetz (UT)			
Mr. Marino (PA)	X		
Mr. Gowdy (SC)			
Mr. Labrador (ID)	X		
Mr. Farenthold (TX)			
Mr. Collins (GA)	X		
Mr. DeSantis (FL)	X		
Ms. Walters (CA)	X		
Mr. Buck (CO)			
Mr. Ratcliffe (TX)	X		
Mr. Trott (MI)	X		
Mr. Bishop (MI)	X		
Mr. Conyers, Jr. (MI), Ranking Member		X	
Mr. Nadler (NY)		X	
Ms. Lofgren (CA)			
Ms. Jackson Lee (TX)			
Mr. Cohen (TN)	X		
Mr. Johnson (GA)			
Mr. Pierluisi (PR)	X		
Ms. Chu (CA)		X	
Mr. Deutch (FL)	X		
Mr. Gutierrez (IL)			
Ms. Bass (CA)			
Mr. Richmond (LA)			
Ms. DelBene (WA)	X		
Mr. Jeffries (NY)		X	
Mr. Cicilline (RI)	X		

ROLLCALL NO. 2—Continued

	Ayes	Nays	Present
Mr. Peters (CA)	X		
Total	23	4	

Committee Oversight Findings

In compliance with clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee advises that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

New Budget Authority and Tax Expenditures

Clause 3(c)(2) of rule XIII of the Rules of the House of Representatives is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

Congressional Budget Office Cost Estimate

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill, H.R. 2315, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, July 21, 2015.

Hon. BOB GOODLATTE, CHAIRMAN,
Committee on the Judiciary,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 2315, the "Mobile Workforce State Income Tax Simplification Act of 2015."

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Aurora Swanson (for Federal costs), who can be reached at 226 2860, and Jon Sperl (for intergovernmental mandates), who can be reached at 225 3220.

Sincerely,

KEITH HALL,
DIRECTOR.

Enclosure

cc: Honorable John Conyers, Jr.
Ranking Member

H.R. 2315—Mobile Workforce State Income Tax Simplification Act of 2015.

As ordered reported by the House Committee on the Judiciary on June 17, 2015.

H.R. 2315 would establish consistent criteria for States to determine State taxation and employer withholding for nonresidents who work in a State. CBO estimates that Federal taxation and employer withholding would not be affected by the legislation and that implementing the bill would have no effect on the Federal budget. Enacting H.R. 2315 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

H.R. 2315 would impose an intergovernmental mandate as defined in the Unfunded Mandates Reform Act (UMRA) by prohibiting States from taxing the income of employees who work in the State for fewer than 31 days. The prohibition would not apply to the income of professional athletes, entertainers, or public figures. UMRA includes in its definition of mandate costs any amounts that State governments would be prohibited from raising in revenues as a result of the mandate. The mandate costs of H.R. 2315 would include taxes that State governments would be precluded from collecting under the bill.

Most States that levy a personal income tax allow residentsq to take a credit for income taxes that the residents pay to another State. The cost of the mandate would equal, for all States collectively, the difference between the amount of revenue that they would lose—from nonresidents who work in the State for fewer than 31 days—and the amount of revenue they would gain—from residents whose credits for payments to other States would be lower under the bill. Generally, States that have large employment centers close to a State border would lose the most revenue; States from which employees tend to commute would gain revenue. For example, New York would probably lose the largest amount of revenue—between $50 million and $125 million per year, according to State and industry estimates—and Illinois, Massachusetts, and California would face smaller losses. In contrast, New Jersey would probably gain revenue. Because States tax income at different rates and on different tax bases, the changes in tax revenues nationwide would not net to zero.

On the basis of information from officials in a number of States, analysis of State tax data, and an analysis by Ernst & Young, CBO estimates that, for all States collectively, the bill would reduce revenues on a net basis by between $50 million and $100 million per year beginning in 2018, the first full year that the bill's changes would be in effect. Given that range—stemming from the underlying uncertainty about the amount of revenue that States collect from nonresidents and the amount they would receive from residents whose credits would be lower under the bill—CBO cannot determine whether the net cost of the intergovernmental mandate in the bill would exceed the annual threshold established in UMRA ($77 million in 2015, adjusted annually for inflation).

H.R. 2315 contains no private-sector mandates as defined in UMRA.

The CBO staff contacts for this estimate are Aurora Swanson (for Federal costs) and Jon Sperl (for intergovernmental mandates). This estimate was approved H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

Duplication of Federal Programs

No provision of H.R. 2315 establishes or reauthorizes a program of the Federal Government known to be duplicative of another Federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111 139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

Disclosure of Directed Rule Makings

The Committee estimates that H.R. 2315 specifically directs to be completed no specific rule makings within the meaning of 5 U.S.C. 551.

Performance Goals and Objectives

The Committee states that pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, H.R. 2315 provides clear, uniform guidelines for when States may tax nonresident employees who travel to the taxing State to perform work.

Advisory on Earmarks

In accordance with clause 9 of rule XXI of the Rules of the House of Representatives, H.R. 2315 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(d), 9(e), or 9(f) of Rule XXI.

Section-by-Section Analysis

The following discussion describes the bill as reported by the Committee.

Section 1. Short Title

This Act may be cited as the "Mobile Workforce State Income Tax Simplification Act of 2015."

Section 2. Limitations on State Withholding and Taxation of Employee Income

Subsection (a)—A State may not subject nonresidents to personal income tax unless the nonresident is "present and performing employment duties'" for more than 30 days in the calendar year in which "the wages or other remuneration is earned."

Subsection (b)—No employer withholding requirement for nonresidents may be imposed unless the 30-day trigger is met, but once triggered, it is retroactive to Day 1 of the employees' work in-state.

Subsection (c)—For purposes of determining penalties related to employers' failures to withhold or report, employers may rely on an employee's determination of the time spent in a nonresident State, unless (1) there is fraud or collusion to avoid taxation between the employer and employee; OR (2) the employer voluntarily "main-

tains a time and attendance system that tracks where the employee performs duties on a daily basis," in which case that data must be used to calculate withholding requirements.[23]

Subsection (d)—Defines relevant terms. Of particular note:

(1) Working in a State for a "Day" means that the employee performs more of the employee's employment duties within such State than in any other State during that day. However, if the employee worked only in the resident and in *one* nonresident State during that day, it is counted as a nonresident day regardless of the time spent there. Transit time is excluded from these calculations.

(2) "Employee" is defined according to State law consistent with State sovereignty principles. The term does not include a professional athlete, entertainer, or certain public figures.

(6) "Employer" is defined by State law unless the State provides no definition, in which case Federal law controls. Again, this is consistent with State sovereignty principles.

(8) "Time and Attendance System" means a system that requires employees to record the locations where they work every day and that the employer uses that system to allocate employees' wages for tax purposes.

(9) "Wages or Other Remuneration" is left to the States to define.

Section 3. Effective Date; Applicability.

The Act is effective on January 1 of the second year after the date of enactment and does not apply to any tax obligation accrued before then.

Dissenting Views

Most would agree that a uniform framework specifying when an employer must withhold state income tax would help ensure simplicity and be more administrable than the current varied state standards.[1] Although H.R. 2315, the "Mobile Workforce State Income Tax Simplification Act of 2015," is intended to achieve this result, the means by which it does so would lead to significant state revenue losses. Specifically, the bill's 30-day threshold is simply too long and, as drafted, could facilitate manipulation. Our concerns are shared by a broad coalition of labor and tax organizations, including the American Federation of Labor and Congress of Industrial Organizations, the American Federation of State, County and Municipal Employees, the American Federation of Government Employees, the American Federation of Teachers, the Amalgamated Transit Union, the Communications Workers of America,

[23] This description covers Paragraphs (c)(1) and (c)(3). Paragraph (c)(2) merely underscores that the employer may rely on the employee, even if it could theoretically gather the necessary information from its records, provided that the employer does not maintain a specific tracking system described in Paragraph (c)(3).

[1] *See e.g., Unofficial Tr. of Markup of H.R. 2315, the Mobile Workforce State Income Tax Simplification Act of 2015, H.R. 1643, the Digital Goods and Services Tax Fairness Act of 2015, and H.R. 2584, the Business Activity Tax Simplification Act of 2015: Before the H. Comm. on the Judiciary,* 114th Cong. 4–6 (June 17, 2015) (statement of Chairman Bob Goodlatte (R–VA)) [hereinafter "2015 Markup"].

the International Federation of Professional and Technical Engineers, the International Union of Police Associations, the National Education Association, the Service Employees International Union, the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, the Federation of Tax Administrators, and the Multistate Tax Commission.[2]

For these reasons and others set forth below, we must respectfully dissent.

DESCRIPTION AND BACKGROUND

In an ever-increasing mobile U.S. workforce, employees often work in several states throughout the year. As a result, these employees may incur state income tax obligations in more than just their resident state and they are obligated to pay state income taxes to the state where income is earned or where the services giving rise to the income are performed.[3] Although an employee's resident state may tax all income regardless of where the income is earned,[4] the resident state typically provides a credit for any income taxes paid to other states.[5]

A total of 41 states currently collect state income taxes[6] and each has established a threshold for when an earner must pay such taxes and when the employer must withhold.[7] The thresholds generally fall into two categories at which employers must begin to withhold income for state tax purposes: a threshold based on the number of days that the employee earned income in the state and

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[2] Letter from the American Federation of Labor and Congress of Industrial Organizations, American Federation of State, County and Municipal Employees, American Federation of Government Employees, American Federation of Teachers, Amalgamated Transit Union, Communications Workers of America, International Federation of Professional and Technical Engineers, International Union of Police Associations, National Education Association, Service Employees International Union, International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (June 16, 2015) (on file with the H. of Representatives Comm. on the Judiciary, Democratic Staff); Federation of Tax Administrators Resolution 2015–2 (Federal Mobile Workforce Legislation) (June 18, 2015) (on file with the H. of Representatives Comm. on the Judiciary, Democratic Staff); Letter from Julie P. Magee, Chair of the Multistate Tax Comm'n, to Representative Bob Goodlatte, Chairman of the H. Comm. on the Judiciary, & Representative John Conyers, Jr., Ranking Member of the H. Comm. on the Judiciary (July 8, 2015) (on file with the H. Comm. on the Judiciary Democratic staff) [hereinafter "MTC Letter"].

[3] Shaffer v. Carter, 252 U.S. 37, 52 (1920) ("[J]ust as a State may impose general income taxes upon its own citizens and residents whose persons are subject to its control, it may, as a necessary consequence, levy a duty of like character, and not more onerous in its effect, upon incomes accruing to non-residents from their property or business within the State, or their occupations carried on therein.").

[4] *See* New York *ex rel.* Cohn v. Graves, 300 U.S. 308 (1937); Lawrence v. State Tax Comm'n, 286 U.S. 276 (1932) (holding that the state has unrestricted power to tax citizens' net income even if activities are carried on outside of the state).

[5] *Unofficial Tr. of Nexus Issues: Hearing on H.R. 2315, the Mobile Workforce State Income Tax Simplification Act of 2015, H.R. 1643, the Digital Goods and Services Tax Fairness Act of 2015, and H.R. 2584, the Business Activity Tax Simplification Act of 2015: Before the Subcomm. on Reg. Reform, Com. and Antitrust Law of the H. Comm. on the Judiciary,* 114th Cong. (2015)(written statement of Julie P. Magee, Commissioner of the Alabama Department of Revenue, at 5) [hereinafter the "2015 Hearing"].

[6] *Mobile Workforce State Income Tax Simplification Act of 2011: Hearing on H.R. 1864 Before the Subcomm. on Courts, Com. and Admin. Law of the H. Comm. on the Judiciary,* 112th Cong. 41 (2011) [hereinafter the "2011 Hearing"]. The following nine states do not impose an individual income tax: Alaska, Florida, Nevada, New Hampshire, South Dakota, Tennessee, Texas, Washington, and Wyoming. Although the District of Columbia may tax its residents, Federal law bars it from taxing the income of non-residents. Pub. L. No. 93–198 (1973). *But see Mobile Workforce State Income Tax Simplification Act of 2013: Hearing on H.R. 1129 Before the Subcomm. on Reg. Reform, Com. and Antirust Law of the H. Comm. on the Judiciary,* 113th Cong. 33–39 (2014) (statement of Jeffrey A. Porter, Owner, Porter & Associates, CPAs, on behalf of the American Institute of Certified Public Accountants) (contending that not 41 but 43 states impose an income tax).

[7] 2015 Hearing (written statement of Doug Lindholm, President and Executive Director of the Council on State Taxation, at 2).

a threshold based on the amount of income earned in the state.[8] For example, New York requires withholding after an individual has worked 14 days within the state.[9] In contrast, Wisconsin requires withholding once the employee has earned at least $1,500 within the state.[10]

As a result of these differing thresholds, both states and employees have burdensome compliance and paperwork requirements,[11] which are particularly challenging for employees who must travel for work.[12] Accordingly, a solution that would impose a national uniform standard is urged by those who have encountered such difficulties.

H.R. 2315 seeks to address these differing standards by establishing a national uniform threshold. Specifically, it bars a state from imposing income taxes on a non-resident until the non-resident has worked more than 30 workdays within a calendar year within the state.[13] The 30-day threshold would not apply, however, to certain high-income individuals (e.g., professional athletes, entertainers, and certain public figures), although they would still be subject to current state thresholds.[14] The bill defines what constitutes a workday to ensure that no state double counts the workday of an employee.[15]

CONCERNS WITH H.R. 2315

I. H.R. 2315 WILL RESULT IN MAJOR TAX REVENUE LOSSES FOR CERTAIN STATES

H.R. 2315's 30-day threshold would allow a non-resident employee to work *six entire business weeks* (or more than ten percent of the year) in another state and avoid an obligation to pay any income taxes to that state.[16] The Congressional Budget Office (CBO) stated that "H.R. 2315 would impose an intergovernmental mandate as defined by the Unfunded Mandates Reform Act" and result in major revenue losses of "between $50 million and $100 million per year" collectively.[17] CBO estimates that "New York would probably lose the largest amount of revenue—between $50 million and $125 million per year, according to state and industry estimates—and Illinois, Massachusetts, and California would face smaller

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[8] 2011 Hearing at 17 (written statement of Jeffrey A. Porter, speaking on behalf of the American Institute of Certified Public Accountants).

[9] *State of New York—Department of Taxation and Finance, Income/Franchise Tax—District Office Audit Manual, Withholding Tax Field Audit Guidelines,* at 24 (Sept. 17, 2004), *available at* http://www.bcnys.org/inside/tax/withholding.pdf.

[10] Wis. Stat. § 71.64(6)(b) (2015).

[11] 2015 Hearing (written statement of Doug Lindholm, President and Executive Director of the Council on State Taxation, at 2).

[12] 2011 Hearing at 2 (statement of Ranking Member Coble); *id.,* at 35 (written statement of Joseph R. Crosby, COO and Senior Policy Director for the Council on State Taxation).

[13] H.R. 2315, § 2(a)(2).

[14] H.R. 2315, § 2(d)(2) (high-income individuals are excluded from the definition of "employee" and therefore the 30-day threshold would not apply to them).

[15] H.R. 2315, § 2(d)(1).

[16] *Unofficial Tr. of Markup of H.R. 1864, the Mobile Workforce State Income Tax Simplification Act of 2011: Before the H. Comm. on the Judiciary,* 112th Cong. 94 (Nov. 17, 2011) (statement of Representative Jerrold Nadler).

[17] Congressional Budget Office Cost Estimate, H.R. 2315: Mobile Workforce State Income Tax Simplification Act of 2015 (July 21, 2015). The Unfunded Mandates Reform Act is intended to curb the practice of imposing Federal mandates on state and local governments without adequate funding. Unfunded Mandates Reform Act of 1995, Pub. L. No. 104–4, 109 Stat. 48 (1995).

losses."[18] The State of New York itself estimates that the bill will lead to a tax revenue loss of between $100 million and $125 million starting in 2017.[19] Of note, this "revenue loss is greater than the revenue impact on all other states combined."[20] Such shortfalls in tax revenues would force states to make up these losses by shifting the tax burden to resident taxpayers through increased property, income, and sales taxes, and perhaps by cutting governmental services. Unfortunately, an amendment offered by Representatives Jerrold Nadler (D–NY) and Hakeem Jeffries (D–NY) that would have shortened the threshold to a reasonable 14 days failed by a vote of 7 to 12.[21]

II. H.R. 2315 HINDERS ENFORCEMENT OF INCOME TAX COLLECTION

H.R. 2315 also could prohibit an employer from withholding an employee's income taxes owed to a non-resident state. Section 2(c) of the bill provides that—for purposes of determining an employer's obligation to withhold state income taxes for an employee—an employer may rely on the employee's determination of the time the employee is expected to spend in another state during the year.[22] Thus, if the employee does not inform his or her employer about *expecting* to spend more than 30 work days during the calendar year in another state, this provision effectively prevents the employer from withholding an employee's state income taxes to a nonresident state. "This is true even if the employer is aware that the employee has been working in a state more than 30 days, as long as that state cannot prove that the employee committed fraud in making his annual determination *and that the employer knew it.*"[23] As a result, H.R. 2315 undermines enforcement of state income tax collection.

CONCLUSION

Although real problems are presented for both states and employees as the result of disparate state employment tax withholding criteria, H.R. 2315 is not the solution. We cannot support legislation that will cause states to incur significant revenue losses, which the bill in its current form would do. Nevertheless, had the amendment to H.R. 2315, which would have shortened the threshold period to 14 days been accepted, we could have supported this revised version of the legislation because it would have lessened its

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[18] *Id.* The ranges of revenue losses for New York exceed the range of overall losses for the states collectively because "states tax income at different rates and on different tax bases, the changes in tax revenues nationwide would not net to zero." *Id.*

[19] Letter from Jerry Boone, Commissioner of the Department of Taxation and Finance, State of New York, to Speaker John Boehner, Minority Leader Nancy Pelosi, Representative Bob Goodlatte, Chairman of the House Committee on the Judiciary, & Representative John Conyers, Jr., Ranking Member of the House Committee on the Judiciary (July 8, 2015) (on file with the H. Comm. on the Judiciary, Democratic Staff). In his letter, Commissioner Boone details how his office calculated that figure:

> Our estimate is constructed through a simulation of actual New York State nonresident tax returns from tax year 2012. Nonresident wages, the base of the estimate, are grown to tax year 2017 using the most recent forecast from the New York State Division of the Budget. We also build in a behavioral assumption regarding the actions likely to be taken by some nonresidents to stay below the 30-day threshold. Finally, the estimate includes an offset for the reduction in the resident credit New York provides to its residents who work out-of-state.

[20] *Id.*

[21] 2015 Markup at 40.

[22] H.R. 2315, § 2(c).

[23] MTC Letter.

impact on state revenues while still providing the certainty proponents of the legislation seek. Absent a more reasonable threshold, we must oppose the bill as ordered reported by the Committee.

MR. CONYERS, JR.
MR. NADLER.
MS. CHU.
MR. JEFFRIES.

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