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. DONELLY, 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.

Be it enacted by the Senate and House of Representa-

tives 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 2017”.

SEC. 2. LIMITATIONS ON STATE WITHHOLDING AND TAXATION OF EMPLOYEE INCOME.

(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.

(e) 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 em-
ployee will perform duties absent—

(A) the employer’s actual knowledge of
fraud by the employee in making the determina-
tion; 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 reg-
ular course of business that record the location of an
employee, such records shall not preclude an employ-
er’s ability to rely on an employee’s determination
under paragraph (1); and

(3) notwithstanding paragraph (2), if an em-
ployer, 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 pur-
poses of this Act:

(1) DAY.—

(A) Except as provided in subparagraph

(B), an employee is considered present and per-
forming 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 non-resident State during one day, such employee shall be considered to have performed more of the employee’s employment duties in the non-resident 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, qualified production employee, 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 ca-

cacity as a professional athlete.

(4) PROFESSIONAL ENTERTAINER.—The term

“professional entertainer” means a person of promi-
nence who performs services in the professional per-
forming arts for wages or other remuneration on a
per-event basis, provided that the wages or other re-
muneration are paid to such person for performing
services in his or her capacity as a professional en-
tertainer.

(5) QUALIFIED PRODUCTION EMPLOYEE.—The
term “qualified production employee” means a per-
son who performs production services of any nature
directly in connection with a State qualified, cer-
tified or approved film, television or other commer-
cial video production for wages or other remunera-
tion, provided that the wages or other remuneration
paid to such person are qualified production costs or
expenditures under such State’s qualified, certified
or approved film incentive program, and that such
wages or other remuneration must be subject to
withholding under such film incentive program as a
condition to treating such wages or other remunera-
tion as a qualified production cost or expenditure.
(6) 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.

(7) 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.

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

(9) 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 in-
come tax purposes among all States in which
the employee performs employment duties for
such employer.

(10) 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 second calendar 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.