

117TH CONGRESS
1ST SESSION

S. 1274

To limit the authority of States or other taxing jurisdictions to tax certain income of employees for employment duties performed in other States or taxing jurisdictions, and for other purposes.

IN THE SENATE OF THE UNITED STATES

APRIL 21, 2021

Mr. THUNE (for himself and Mr. BROWN) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To limit the authority of States or other taxing jurisdictions to tax certain income of employees for employment duties performed in other States or taxing jurisdictions, and for other purposes.

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 “Remote and Mobile
5 Worker Relief Act of 2021”.

1 **SEC. 2. LIMITATIONS ON WITHHOLDING AND TAXATION OF**
2 **EMPLOYEE INCOME.**

3 (a) IN GENERAL.—No part of the wages or other re-
4 muneration earned by an employee who is a resident of
5 a taxing jurisdiction and performs employment duties in
6 more than one taxing jurisdiction shall be subject to in-
7 come tax in any taxing jurisdiction other than—

8 (1) the taxing jurisdiction of the employee’s res-
9 idence; and

10 (2) any taxing jurisdiction within which the em-
11 ployee is present and performing employment duties
12 for more than 30 days during the calendar year in
13 which the wages or other remuneration is earned.

14 (b) INCOME TAX WITHHOLDING AND REPORTING.—
15 Wages or other remuneration earned in any calendar year
16 shall not be subject to income tax withholding and report-
17 ing requirements with respect to any taxing jurisdiction
18 unless the employee is subject to income tax in such taxing
19 jurisdiction under subsection (a). Income tax withholding
20 and reporting requirements under subsection (a)(2) shall
21 apply to wages or other remuneration earned as of the
22 commencement date of employment duties in the taxing
23 jurisdiction during the calendar year.

24 (c) OPERATING RULES.—For purposes of deter-
25 mining penalties related to an employer’s income tax with-

1 holding and reporting requirements with respect to any
2 taxing jurisdiction—

3 (1) an employer may rely on an employee’s an-
4 nual determination of the time expected to be spent
5 by such employee in the performance of employment
6 duties in the taxing jurisdictions in which the em-
7 ployee will perform such 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 reg-
15 ular course of business that record the location at
16 which an employee performs employment duties,
17 such records shall not preclude an employer’s ability
18 to rely on an employee’s determination under para-
19 graph (1); and

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

1 (d) DEFINITIONS AND SPECIAL RULES.—For pur-
2 poses 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 taxing ju-
7 risdiction for a day if the employee performs
8 more of the employee's employment duties with-
9 in such taxing jurisdiction than in any other
10 taxing jurisdiction during a day.

11 (B) If an employee performs employment
12 duties in a resident taxing jurisdiction and in
13 only one nonresident taxing jurisdiction during
14 one day, such employee shall be considered to
15 have performed more of the employee's employ-
16 ment duties in the nonresident taxing jurisdic-
17 tion than in the resident taxing jurisdiction for
18 such day.

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

24 (2) EMPLOYEE.—

25 (A) IN GENERAL.—

1 (i) GENERAL DEFINITION.—Except as
2 provided in clause (ii), the term “em-
3 ployee” has the meaning given such term
4 in section 3121(d) of the Internal Revenue
5 Code of 1986, unless such term is defined
6 by the taxing jurisdiction in which the per-
7 son’s employment duties are performed, in
8 which case the taxing jurisdiction’s defini-
9 tion shall prevail.

10 (ii) EXCEPTION.—The term “em-
11 ployee” shall not include a professional
12 athlete, professional entertainer, qualified
13 production employee, or certain public fig-
14 ures.

15 (B) PROFESSIONAL ATHLETE.—The term
16 “professional athlete” means a person who per-
17 forms services in a professional athletic event,
18 provided that the wages or other remuneration
19 are paid to such person for performing services
20 in his or her capacity as a professional athlete.

21 (C) PROFESSIONAL ENTERTAINER.—The
22 term “professional entertainer” means a person
23 of prominence who performs services in the pro-
24 fessional performing arts for wages or other re-
25 muneration on a per-event basis, provided that

1 the wages or other remuneration are paid to
2 such person for performing services in his or
3 her capacity as a professional entertainer.

4 (D) QUALIFIED PRODUCTION EM-
5 PLOYEE.—The term “qualified production em-
6 ployee” means a person who performs produc-
7 tion services of any nature directly in connec-
8 tion with a taxing jurisdiction qualified, cer-
9 tified or approved film, television or other com-
10 mercial video production for wages or other re-
11 munerations, provided that the wages or other
12 remuneration paid to such person are qualified
13 production costs or expenditures under such
14 taxing jurisdiction’s qualified, certified or ap-
15 proved film, television or other commercial
16 video production incentive program, and that
17 such wages or other remuneration must be sub-
18 ject to withholding under such qualified, cer-
19 tified or approved film, television or other com-
20 mercial video production incentive program as a
21 condition to treating such wages or other remu-
22 neration as a qualified production cost or ex-
23 penditure.

24 (E) CERTAIN PUBLIC FIGURES.—The term
25 “certain public figures” means persons of

1 prominence who perform services for wages or
2 other remuneration on a per-event basis, pro-
3 vided that the wages or other remuneration are
4 paid to such person for services provided at a
5 discrete event, in the nature of a speech, public
6 appearance, or similar event.

7 (3) EMPLOYER.—The term “employer” has the
8 meaning given such term in section 3401(d) of the
9 Internal Revenue Code of 1986, unless such term is
10 defined by the taxing jurisdiction in which the em-
11 ployee’s employment duties are performed, in which
12 case the taxing jurisdiction’s definition shall prevail.

13 (4) TAXING JURISDICTION.—The term “taxing
14 jurisdiction” means any of the several States, the
15 District of Columbia, any municipality, city, county,
16 township, parish, transportation district, or assess-
17 ment jurisdiction, or any other political subdivision
18 within the territorial limits of the United States with
19 the authority to impose a tax, charge, or fee.

20 (5) TIME AND ATTENDANCE SYSTEM.—The
21 term “time and attendance system” means a system
22 in which—

23 (A) the employee is required on a contem-
24 poraneous basis to record his work location for
25 every day worked outside of the taxing jurisdic-

1 tion in which the employee’s employment duties
2 are primarily performed; and

3 (B) the system is designed to allow the em-
4 ployer to allocate the employee’s wages for in-
5 come tax purposes among all taxing jurisdic-
6 tions in which the employee performs employ-
7 ment duties for such employer.

8 (6) WAGES OR OTHER REMUNERATION.—The
9 term “wages or other remuneration” may be defined
10 by the taxing jurisdiction in which the employment
11 duties are performed.

12 (e) PLACE OF RESIDENCE.—For purposes of this sec-
13 tion, the residence of an employee shall be determined
14 under the laws of the taxing jurisdiction in which such
15 employee maintains a dwelling which serves as the employ-
16 ee’s permanent place of abode during the calendar year.

17 (f) ADJUSTMENT DURING CORONAVIRUS PAN-
18 DEMIC.—With respect to calendar years 2020 and 2021,
19 in the case of any employee who performs employment du-
20 ties in any taxing jurisdiction other than the taxing juris-
21 diction of the employee’s residence during such year as
22 a result of the COVID–19 public health emergency, sub-
23 section (a)(2) shall be applied by substituting “90 days”
24 for “30 days”.

1 **SEC. 3. STATE AND LOCAL TAX CERTAINTY.**

2 (a) STATUS OF EMPLOYEES DURING COVERED PE-
3 RIOD.—Notwithstanding section 2(a)(2) or any provision
4 of law of a taxing jurisdiction, with respect to any em-
5 ployee who is working remotely within such taxing juris-
6 diction during the covered period—

7 (1) except as provided under paragraph (2),
8 any wages earned by such employee during such pe-
9 riod shall be deemed to have been earned at the pri-
10 mary work location of such employee; and

11 (2) if an employer, at its sole discretion, main-
12 tains a system that tracks where such employee per-
13 forms duties on a daily basis, wages earned by such
14 employee may, at the election of such employer, be
15 treated as earned at the location in which such du-
16 ties were remotely performed.

17 (b) STATUS OF BUSINESSES DURING COVERED PE-
18 RIOD.—Notwithstanding any provision of law of a taxing
19 jurisdiction—

20 (1) in the case of an out-of-jurisdiction business
21 which has any employees working remotely within
22 such jurisdiction during the covered period, the du-
23 ties performed by such employees within such juris-
24 diction during such period shall not be sufficient to
25 create any nexus or establish any minimum contacts
26 or level of presence that would otherwise—

1 (A) subject such business to any registra-
2 tion, taxation, or other related requirements for
3 businesses operating within such jurisdiction; or

4 (B) cause such business to be deemed a
5 resident of such jurisdiction for tax purposes;
6 and

7 (2) except as provided under subsection (a)(2),
8 with respect to any tax imposed by such taxing ju-
9 risdiction which is determined, in whole or in part,
10 based on net or gross receipts or income, for pur-
11 poses of apportioning or sourcing such receipts or
12 income, any duties performed by an employee of an
13 out-of-jurisdiction business while working remotely
14 during the covered period—

15 (A) shall be disregarded with respect to
16 any filing requirements for such tax; and

17 (B) shall be apportioned and sourced to
18 the tax jurisdiction which includes the primary
19 work location of such employee.

20 (c) DEFINITIONS.—For purposes of this section—

21 (1) COVERED PERIOD.—The term “covered pe-
22 riod” means, with respect to any employee working
23 remotely, the period—

24 (A) beginning on the date on which such
25 employee began working remotely; and

1 (B) ending on the earlier of—

2 (i) the date on which the employer al-
3 lows, at the same time—

4 (I) such employee to return to
5 their primary work location; and

6 (II) not less than 90 percent of
7 their permanent workforce to return
8 to such work location; or

9 (ii) December 31, 2021.

10 (2) EMPLOYEE.—The term “employee” has the
11 meaning given such term in section 3121(d) of the
12 Internal Revenue Code of 1986, unless such term is
13 defined by the taxing jurisdiction in which the per-
14 son’s employment duties are deemed to have been
15 performed under subsection (a), in which case the
16 taxing jurisdiction’s definition shall prevail.

17 (3) EMPLOYER.—The term “employer” has the
18 meaning given such term in section 3401(d) of the
19 Internal Revenue Code of 1986, unless such term is
20 defined by the taxing jurisdiction in which the per-
21 son’s employment duties are deemed to have been
22 performed under subsection (a), in which case the
23 taxing jurisdiction’s definition shall prevail.

24 (4) OUT-OF-JURISDICTION BUSINESS.—The
25 term “out-of-jurisdiction business” means, with re-

1 spect to any taxing jurisdiction, any business entity
2 which, excepting any employees of such business who
3 are working remotely within such jurisdiction during
4 the covered period, would, under the existing law of
5 such taxing jurisdiction, not otherwise—

6 (A) be subject to any registration, tax-
7 ation, or other related requirement for busi-
8 nesses operating within such jurisdiction; or

9 (B) be deemed a resident of such jurisdic-
10 tion for tax purposes.

11 (5) PRIMARY WORK LOCATION.—The term “pri-
12 mary work location” means, with respect to an em-
13 ployee, the address of the employer where the em-
14 ployee is regularly assigned to work when such em-
15 ployee is not working remotely during the covered
16 period.

17 (6) TAXING JURISDICTION.—The term “taxing
18 jurisdiction” has the same meaning given such term
19 under section 2(d)(4).

20 (7) WAGES.—The term “wages” means all
21 wages and other remuneration paid to an employee
22 that are subject to tax or withholding requirements
23 under the law of the taxing jurisdiction in which the
24 employment duties are deemed to be performed
25 under subsection (a) during the covered period.

1 (8) WORKING REMOTELY.—The term “working
2 remotely” means the performance of duties by an
3 employee at a location other than the primary work
4 location of such employee at the direction of his or
5 her employer due to conditions resulting from the
6 public health emergency relating to the virus SARS-
7 CoV-2 or coronavirus disease 2019 (referred to in
8 this paragraph as “COVID-19”), including—

9 (A) to comply with any government order
10 relating to COVID-19;

11 (B) to prevent the spread of COVID-19;

12 and

13 (C) due to the employee or a member of
14 the employee’s family contracting COVID-19.

15 (d) PRESERVATION OF AUTHORITY OF TAXING JU-
16 RISDICTIONS.—This section shall not be construed as
17 modifying, impairing, superseding, or authorizing the
18 modification, impairment, or supersession of the law of
19 any taxing jurisdiction pertaining to taxation except as ex-
20 pressly provided in subsections (a) through (c).

21 **SEC. 4. EFFECTIVE DATE; APPLICABILITY.**

22 (a) EFFECTIVE DATE.—This Act shall apply to cal-
23 endar years beginning after December 31, 2019.

1 (b) APPLICABILITY.—This Act shall not apply to any
2 tax obligation that accrues before January 1, 2020.

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