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.

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 “Remote and Mobile Worker Relief Act of 2021”.

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

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

(1) the taxing jurisdiction of the employee’s residence; and
(2) any taxing jurisdiction 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) INCOME TAX WITHHOLDING AND REPORTING.—Wages or other remuneration earned in any calendar year shall not be subject to income tax withholding and reporting requirements with respect to any taxing jurisdiction unless the employee is subject to income tax in such taxing jurisdiction 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 taxing jurisdiction during the calendar year.

(c) OPERATING RULES.—For purposes of determining penalties related to an employer’s income tax with-
holding and reporting requirements with respect to any taxing jurisdiction—

(1) an employer may rely on an employee’s annual determination of the time expected to be spent by such employee in the performance of employment duties in the taxing jurisdictions in which the employee will perform such 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 at which an employee performs employment duties, 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 taxing jurisdiction for a day if the employee performs more of the employee’s employment duties within such taxing jurisdiction than in any other taxing jurisdiction during a day.

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

(A) In general.—
(i) **General Definition.**—Except as provided in clause (ii), the term “employee” has the meaning given such term in section 3121(d) of the Internal Revenue Code of 1986, unless such term is defined by the taxing jurisdiction in which the person’s employment duties are performed, in which case the taxing jurisdiction’s definition shall prevail.

(ii) **Exception.**—The term “employee” shall not include a professional athlete, professional entertainer, qualified production employee, or certain public figures.

**(B) 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.

**(C) Professional Entertainer.**—The term “professional entertainer” means a person of prominence 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.

(D) QUALIFIED PRODUCTION EMPLOYEE.—The term “qualified production em-
ployee” means a person who performs produc-
tion services of any nature directly in connec-
tion with a taxing jurisdiction qualified, cer-
tified or approved film, television or other com-
mmercial video production for wages or other re-
muneration, provided that the wages or other remuneration paid to such person are qualified
production costs or expenditures under such
taxing jurisdiction’s qualified, certified or ap-
proved film, television or other commercial
video production incentive program, and that
such wages or other remuneration must be sub-
ject to withholding under such qualified, cer-
tified or approved film, television or other com-
mercial video production incentive program as a
condition to treating such wages or other remu-
neration as a qualified production cost or ex-
penditure.

(E) 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.

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

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

(5) 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 taxing jurisdic-
tion 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 taxing jurisdictions in which the employee performs employment duties for such employer.

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

(e) PLACE OF RESIDENCE.—For purposes of this section, the residence of an employee shall be determined under the laws of the taxing jurisdiction in which such employee maintains a dwelling which serves as the employee’s permanent place of abode during the calendar year.

(f) ADJUSTMENT DURING CORONAVIRUS PANDEMIC.—With respect to calendar years 2020 and 2021, in the case of any employee who performs employment duties in any taxing jurisdiction other than the taxing jurisdiction of the employee’s residence during such year as a result of the COVID–19 public health emergency, subsection (a)(2) shall be applied by substituting “90 days” for “30 days”.
SEC. 3. STATE AND LOCAL TAX CERTAINTY.

(a) Status of Employees During Covered Period.—Notwithstanding section 2(a)(2) or any provision of law of a taxing jurisdiction, with respect to any employee who is working remotely within such taxing jurisdiction during the covered period—

(1) except as provided under paragraph (2), any wages earned by such employee during such period shall be deemed to have been earned at the primary work location of such employee; and

(2) if an employer, at its sole discretion, maintains a system that tracks where such employee performs duties on a daily basis, wages earned by such employee may, at the election of such employer, be treated as earned at the location in which such duties were remotely performed.

(b) Status of Businesses During Covered Period.—Notwithstanding any provision of law of a taxing jurisdiction—

(1) in the case of an out-of-jurisdiction business which has any employees working remotely within such jurisdiction during the covered period, the duties performed by such employees within such jurisdiction during such period shall not be sufficient to create any nexus or establish any minimum contacts or level of presence that would otherwise—
(A) subject such business to any registration, taxation, or other related requirements for businesses operating within such jurisdiction; or

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

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

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

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

(e) DEFINITIONS.—For purposes of this section—

(1) COVERED PERIOD.—The term “covered period” means, with respect to any employee working remotely, the period—

(A) beginning on the date on which such employee began working remotely; and
(B) ending on the earlier of—

(i) the date on which the employer al-
allows, at the same time—

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

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


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

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

(4) OUT-OF-JURISDICTION BUSINESS.—The
term “out-of-jurisdiction business” means, with re-
spect to any taxing jurisdiction, any business entity which, excepting any employees of such business who are working remotely within such jurisdiction during the covered period, would, under the existing law of such taxing jurisdiction, not otherwise—

(A) be subject to any registration, taxation, or other related requirement for businesses operating within such jurisdiction; or

(B) be deemed a resident of such jurisdiction for tax purposes.

(5) PRIMARY WORK LOCATION.—The term “primary work location” means, with respect to an employee, the address of the employer where the employee is regularly assigned to work when such employee is not working remotely during the covered period.

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

(7) WAGES.—The term “wages” means all wages and other remuneration paid to an employee that are subject to tax or withholding requirements under the law of the taxing jurisdiction in which the employment duties are deemed to be performed under subsection (a) during the covered period.
(8) WORKING REMOTELY.—The term “working remotely” means the performance of duties by an employee at a location other than the primary work location of such employee at the direction of his or her employer due to conditions resulting from the public health emergency relating to the virus SARS-CoV-2 or coronavirus disease 2019 (referred to in this paragraph as “COVID–19”), including—

(A) to comply with any government order relating to COVID–19;

(B) to prevent the spread of COVID–19; and

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

(d) PRESERVATION OF AUTHORITY OF TAXING JURISDICATIONS.—This section shall not be construed as modifying, impairing, superseding, or authorizing the modification, impairment, or supersession of the law of any taxing jurisdiction pertaining to taxation except as expressly provided in subsections (a) through (c).

SEC. 4. EFFECTIVE DATE; APPLICABILITY.

(a) EFFECTIVE DATE.—This Act shall apply to calendar years beginning after December 31, 2019.
(b) APPLICABILITY.—This Act shall not apply to any tax obligation that accrues before January 1, 2020.