S. 1887

To amend title 4 of the United States Code to limit the extent to which States may tax the compensation earned by nonresident telecommuters and other multi-State workers.

IN THE SENATE OF THE UNITED STATES
MAY 27, 2021
Mr. BLUMENTHAL (for himself, Ms. HASSAN, Mrs. SHAHEEN, and Mr. MURPHY) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL
To amend title 4 of the United States Code to limit the extent to which States may tax the compensation earned by nonresident telecommuters and other multi-State workers.

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 “Multi-State Worker
5 Tax Fairness Act of 2021”.
SEC. 2. LIMITATION ON STATE TAXATION OF COMPENSA-
TION EARNED BY NONRESIDENT TELECOM-
MUTERS AND OTHER MULTI-STATE WORK-
ERS.

(a) IN GENERAL.—Chapter 4 of title 4, United
States Code, is amended by adding at the end the fol-
lowing:

“§ 127. Limitation on State taxation of compensation
earned by nonresident telecommuters
and other multi-State workers

“(a) IN GENERAL.—In applying its income tax laws
to the compensation of a nonresident individual, a State
may deem such nonresident individual to be present in or
working in such State for any period of time only if such
nonresident individual is physically present in such State
for such period and such State may not impose non-
resident income taxes on such compensation with respect
to any period of time when such nonresident individual
is physically present in another State.

“(b) DETERMINATION OF PHYSICAL PRESENCE.—
For purposes of determining physical presence, no State
may deem a nonresident individual to be present in or
working in such State on the grounds that—

“(1) such nonresident individual is present at
or working at home for convenience, or
“(2) such nonresident individual’s work at
home or office at home fails any convenience of the
employer test or any similar test.

“(c) Determination of Periods of Time With
Respect to Which Compensation Is Paid.—For pur-
poses of determining the periods of time with respect to
which compensation is paid, no State may deem a period
of time during which a nonresident individual is physically
present in another State and performing certain tasks in
such other State to be—

“(1) time that is not normal work time unless
such individual’s employer deems such period to be
time that is not normal work time,

“(2) nonworking time unless such individual’s
employer deems such period to be nonworking time,
or

“(3) time with respect to which no compensa-
tion is paid unless such individual’s employer deems
such period to be time with respect to which no com-
pen sation is paid.

“(d) Definitions.—As used in this section—

“(1) Compensation.—The term ‘compensa-
tion’ means the salary, wages, or other remuneration
earned by an individual for personal services per-
formed as an employee or as an independent contrac-

"(2) EMPLOYEE.—The term ‘employee’ means
an employee as defined by the State in which the
nonresident individual is physically present and per-
forming personal services for compensation.

"(3) EMPLOYER.—The term ‘employer’ means
the person having control of the payment of an indi-
vidual’s compensation.

"(4) INCOME TAX.—The term ‘income tax’ has
the meaning given such term by section 110(c).

"(5) INCOME TAX LAWS.—The term ‘income
tax laws’ includes any statutes, regulations, adminis-
trative practices, administrative interpretations, and
judicial decisions.

"(6) NONRESIDENT INDIVIDUAL.—The term
‘nonresident individual’ means an individual who is
not a resident of the State applying its income tax
laws to such individual.

"(7) STATE.—The term ‘State’ means each of
the several States (or any subdivision thereof), the
District of Columbia, and any territory or possession
of the United States.

"(e) NO INFERENCE.—Nothing in this section shall
be construed as bearing on—
“(1) any tax laws other than income tax laws,

“(2) the taxation of corporations, partnerships, trusts, estates, limited liability companies, or other entities, organizations, or persons other than non-resident individuals in their capacities as employees or independent contractors,

“(3) the taxation of individuals in their capacities as shareholders, partners, trust and estate beneficiaries, members or managers of limited liability companies, or in any similar capacities, and

“(4) the income taxation of dividends, interest, annuities, rents, royalties, or other forms of unearned income.”.

(b) CLERICAL AMENDMENT.—The table of sections of such chapter 4 is amended by adding at the end the following new item:

“127. Limitation on State taxation of compensation earned by nonresident telecommuters and other multi-State workers.”.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.