112TH CONGRESS
2d Session
HOUSE OF REPRESENTATIVES
REPORT
112–386

MOBILE WORKFORCE STATE INCOME TAX SIMPLIFICATION ACT OF 2011

FEBRUARY 3, 2012.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. SMITH of Texas, from the Committee on the Judiciary, submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 1864]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 1864) to limit the authority of States to tax certain income of employees for employment duties performed in other States, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

CONTENTS

19–006

The Amendment

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Mobile Workforce State Income Tax Simplification Act of 2011".

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.

(c) OPERATING RULES.—For purposes of determining an employer's State income tax withholding and reporting requirements—

(1) an employer may rely on an employee's determination of the time expected to be spent by such employee in the States in which the employee will perform 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 of an employee, 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 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 nonresident State during one day, such employee shall be considered to have performed more of the employee's employment duties in the nonresident 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, 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 capacity as a professional athlete.

(4) PROFESSIONAL ENTERTAINER.—The term "professional entertainer" means a person 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.

(5) 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.

(6) 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.

(7) STATE.—The term "State" means any of the several States.

(8) 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 preformed; and

(B) the employer uses this data to allocate the employee's wages for income tax purposes among all States in which the employee performs employment duties for such employer.

(9) 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 2d 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.

Purpose and Summary

The Mobile Workforce State Income Tax Simplification Act of 2011 establishes uniform rules for the application of states' income tax laws to employees who perform employment duties in a state but do not reside there. Under the bill, an employee is not responsible to pay income tax to, nor an employer required to withhold and remit income tax on behalf of, a state in which the employee has earned wages for 30 days or fewer during a calendar year.[1]

Background and Need for the Legislation

The Constitution grants Congress the exclusive power to enact legislation concerning matters that have a "substantial effect" on interstate commerce.[2] The Supreme Court has inferred from this grant of power that state and local laws are unconstitutional if they place an undue burden on interstate commerce—a principle commonly known as the "dormant" commerce clause.[3] "The framers were most concerned about stopping protectionist state legislation where a state would discriminate against out-of-staters to benefit its citizens at the expense of out-of-staters."[4]

As sovereign governments, states are generally free to set their own income tax policy, but they must do so in a way that does not place a substantial burden on interstate commerce. As the American workforce is increasingly mobile, Congress has a constitutional duty to ensure that the disparity among states' income tax policies does not stifle interstate economic activity. Forty-one states currently impose a personal income tax on income earned within their

---

[1] Mobile Workforce State Income Tax Simplification Act of 2011, H.R. 1864, § 2, 112th Cong. (2011).

[2] U.S. CONST. art. I, § 8, cl. 3; *U.S. v. Lopez,* 514 U.S. 549, 559 (1995).

[3] *See Gibbons v. Ogden,* 22 U.S. (9 Wheat.) 1 (1824) (invalidating state's grant of monopoly to steamship operator that prevented holders of Federal steamship licenses from navigating state waterways); ERWIN CHEMERINSKY, CONSTITUTIONAL LAW: PRINCIPLES AND POLICIES § 5.3 (2d ed. 2002).

[4] CHEMERINSKY, *supra* note 3, at § 5.3.4.

borders regardless of whether the earner is a resident of the state.[5] In each of those states, not only must a nonresident employee pay tax after performing work for a certain amount of time or earning wages in the state, but the employee's employer must withhold that state's income tax on behalf of the employee and remit it to the state at the end of the year. The question, then, is whether compliance with 41 different states' income tax and withholding laws places a substantial burden on employees who cross state lines to do their job.

Income tax and employer withholding laws vary significantly among jurisdictions. Some states require an employer to withhold income tax on the first day of the employee's travel; others use a hybrid time-spent and dollars-earned test to trigger withholding. For example, in New York, a non-resident's income tax liability is triggered the moment he or she earns wages in the state, but the employer's withholding requirement is not triggered until the 14th day of wage-earning. A non-resident's income tax liability to Idaho is triggered after he makes $1,000 in wages in the state.

Employees are ultimately responsible to report their own income tax liability to a state. Thus in each nonresident income tax state where an employee earns wages, he is required to fill out and file a tax return. In the current system, each state sets its own *de minimis* threshold. Employees who conduct only transient business or earn below a certain amount of wages in the nonresident state need not file a return or pay taxes. The variation among state laws, however, means that an individual who is required to travel for work must track and comply with up to 41 different states' income tax laws, including the preparation of numerous tax returns to nonresident states in many of which he may ultimately be entitled to a refund. This result may discourage employees who conclude that the burden of learning a nonresident state's income tax laws and filing a return there outweighs the opportunity to travel to the state for a few days to conduct business.

Furthermore, the complex patchwork of state income tax withholding laws creates an unnecessary administrative burden on small business employers—America's job creators—who must comply with nonresident states' withholding laws on account of wages their employees earn in the state.[6] At a hearing this Congress, an accountant from West Virginia described the effect tracking 41 states' income tax rules has on small businesses:

> Businesses, including small businesses and family businesses, that operate interstate are subject to significant regulatory burden with regard to compliance with nonresident State income tax withholding laws. These administrative burdens take existing resources from operational aspects of the business and may require the hiring of addi-

[5] For a compilation of current state income tax rates, *see* TAX FOUNDATION, STATE INDIVIDUAL INCOME TAX RATES, 2000–2011, *available at* http://www.taxfoundation.org/taxdata/show/228.html. Note that New Hampshire and Tennessee tax only unearned income, *e.g.* income from dividends and interest, bringing the number of states that tax earned income to 41.

[6] *Mobile Workforce State Income Tax Simplification Act of 2007: Hearing on H.R. 3359 Before Subcomm. on Commercial & Admin. Law of the H. Comm. on the Judiciary,* 110th Cong. (2007), at 16 (statement of Douglas L. Lindholm, President and Executive Director, Council on State Taxation) [hereinafter *2007 Hearing*].

> tional administrative staff or outside experts in order to meet the demands of compliance.[7]

Similarly, in the 110th Congress, a representative of the American Payroll Association explained these administrative burdens:

> Even in the case of an employee who resides in one State and works throughout the year in another State, State and local tax withholding and reporting can be very complicated. The employer has to verify the employee's State of residence, check whether the two States have a reciprocity agreement, analyze the tax laws of both States, and likely withhold tax for both States and prepare a form W-2 for both States.[8]

The resources a small business must devote to income tax withholding compliance is generally offset by raising prices on the cost of goods and services the business sells to consumers.

Large businesses that employ thousands of people are also burdened by the cumulative effect of non-uniform state income tax laws. 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.[9] The diversity of state income tax laws means that large public companies and their auditors must invest a significant amount of time ensuring that the company has withheld correctly for each employee at great expense to the firm.[10]

The Mobile Workforce State Income Tax Simplification Act would substantially simplify state income tax law by imposing a uniform *de minimis* standard for nonresident taxation and employer withholding. It satisfies the advice of reputed tax professor Walter Hellerstein, who in 2007 urged Congress:

> I really do wish to make it clear that I believe the States have a legitimate interest in assuring that workers who earn income in the State pay their fair share of the State tax burdens for the benefits and protections that the State provides to them. But this legitimate interest has to be balanced against the burdens that are imposed on multistate enterprises and on the conduct of interstate commerce by uncertain, inconsistent, and unreasonable withholding obligations imposed by the State.[11]

The bill provides that an employee shall not be subject to income tax in a nonresident state unless he or she has worked for at least 30 days in that jurisdiction.[12] It further provides that an employer

---

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

[8] *2007 Hearing, supra* note 6, at 29 (statement of Dee Nelson, Payroll Manager, Alutiiq, LLC and Subsidiaries, on behalf of American Payroll Association).

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

[10] *2007 Hearing, supra* note 6, at 10 (statement of Rep. Henry "Hank" Johnson).

[11] *2007 Hearing, supra* note 6, at 71 (statement of Walter Hellerstein, Francis Shackelford Distinguished Professor of Taxation Law, University of Georgia School of Law).

[12] H.R. 1864 § 2(a).

is not responsible for withholding on behalf of any employee who is not subject to tax under the Act.[13]

The Mobile Workforce State Income Tax Simplification Act is designed to simplify tax liability and withholding rules, not enable taxpayers to escape their duty to pay state governments their fair share. Consider an example. In 2010, Albert was a resident of Virginia and earned $50,000 total. Of that $50,000, $10,000 was earned when Albert traveled to New York for work and spent 13 days there. Under current law, Albert owes income tax to New York but his employer did not withhold because New York's 14-day withholding trigger was not met. Assume Albert pays $800 to New York in taxes. When Albert files his Virginia tax return, he will report that he receive a tax credit in the amount of $800 against his Virginia returns. If the bill were enacted, however, Albert would owe no tax to New York because he did not earn wages there for more than 30 days. So although Albert would not pay $800 to New York, neither would he receive an $800 credit on his Virginia taxes for taxes paid to other governments. In this way, the bill does not theoretically reduce any one state's tax revenues—after all, for every Albert in Virginia who works temporarily in New York, there is an Albert in New York who works temporarily in Virginia—but simply provides clear rules for nonresident income taxation and reduces unnecessary paperwork for taxpayers and small businesses.

Hearings

The Committee on the Judiciary's Subcommittee on Courts, Commercial and Administrative Law held a legislative hearing on H.R. 1864 on May 24, 2011. Testimony was received from: Jeffrey A. Porter (Owner, Porter & Associates, CPAs); Patrick T. Carter (Director, Delaware Division of Revenue) on behalf of the Federation of Tax Administrators; and Joseph R. Crosby (Chief Operating Officer and Senior Director of Policy, Council on State Taxation).

Committee Consideration

On November 17, 2011, the Judiciary Committee met in open session and ordered the bill H.R. 1864 reported favorably to the House, with an amendment, by voice vote, a quorum being present.

Committee Votes

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the Committee advises that there were no recorded votes during the Committee's consideration of H.R. 1864.

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.

---

[13] *Id.* § 2(b).

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. 1864, 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, January 25, 2012.

Hon. LAMAR SMITH, 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. 1864, the "Mobile Workforce State Income Tax Simplification Act of 2011."

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Mark Grabowicz, who can be reached at 226-2860.

Sincerely,

DOUGLAS W. ELMENDORF,
DIRECTOR.

Enclosure

cc: Honorable John Conyers, Jr.
Ranking Member

H.R. 1864—Mobile Workforce State Income Tax Simplification Act of 2011.

As ordered reported by the House Committee on the Judiciary on November 17, 2011

H.R. 1864 would limit the authority of States to tax the income of certain residents. CBO estimates that implementing the legislation would have no impact on the Federal budget. Enacting the bill would not affect direct spending or revenues, so pay-as-you-go procedures do not apply.

H.R. 1864 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. 1864 would include any taxes that State governments would be precluded from collecting under the bill.

Most States that levy a personal income tax allow residents 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 States receive from nonresidents who work in the State for fewer than 31 days and the amount they would receive from residents whose credits 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 likely lose the largest amount of revenue-from $50 million to $100 million according to State and industry estimates-and Illinois, Massachusetts, and California would face smaller losses. New Jersey and Connecticut would likely gain revenue.

Because of 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 estimate the net cost of the mandate. Consequently, CBO cannot determine whether the net cost of the intergovernmental mandate in the bill would exceed the annual threshold established in UMRA ($73 million in 2012, adjusted annually for inflation).

H.R. 1864 contains no private-sector mandates as defined in UMRA.

The CBO staff contacts for this estimate are Mark Grabowicz (for Federal costs) and Elizabeth Cove Delisle (for intergovernmental impacts). The estimate was approved by Theresa Gullo, Deputy Assistant Director for Budget Analysis.

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. 1864 will facilitate interstate commerce by increasing uniformity among states' income tax policies.

Advisory on Earmarks

In accordance with clause 9 of rule XXI of the Rules of the House of Representatives, H.R. 1864 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(e), 9(f), or 9(g) of Rule XXI.

Section-by-Section Analysis

Section 1. Short Title.

States that the Act may be referred to as the "Mobile Workforce State Income Tax Simplification Act of 2011".

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

Provides that an employee is not subject to income tax except in the state in which he or she resides and a nonresident state in which he or she has performed work for at least 30 days.

Provides that an employer is not responsible for withholding on behalf of an employee that is not subject to income tax under the Act.

Sets certain operating rules for determining where and for how long an employee performs work in a jurisdiction for purposes of the Act.

Defines terms used in the Act.

Section 3. Effective Date.

Provides that the Act shall be effective on January 1 of the second year that begins after the date of the enactment of the Act.

Dissenting Views

H.R. 1864, the "Mobile Workforce State Income Tax Simplification Act of 2011," attempts to address a valid concern, but in so doing would lead to severe state revenue losses. Supporters of the legislation contend that a uniform threshold for when an employer must withhold state income tax will provide simplicity and be more administrable than the current varied state standards.[1] While a uniform threshold would indeed provide more simplicity, the 30-day threshold in the reported bill is excessive. Without a simple fix to establish a more reasonable threshold we cannot support the reported bill. For this reason and others set forth below, we must respectfully dissent.

H.R. 1864, the "Mobile Workforce State Income Tax Simplification Act of 2011," seeks to address the differing standards that states use to impose income taxes on a non-resident. A total of 41 states currently collect state income taxes[2] and each has established a threshold for when an earner must pay such taxes and when the employer must withhold. The thresholds generally fall into two categories at which employers must begin to withhold income for state tax purposes: a days threshold and an income-earned threshold.[3] For example, New York requires withholding after an individual has worked 14 days within the state[4] while Wisconsin requires withholding once the employee has earned at least $1,500 within the state.[5]

In an ever-increasing mobile U.S. workforce, employees may 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. An employee is obligated to pay state income taxes to the state where income is earned or where the services giving rise to the income are performed.[6] Although an employee's resident state may tax all income regardless of where the income

---

[1] *Mobile Workforce State Income Tax Simplification Act of 2011: Hearing on H.R. 1864 before the Subcomm. on Courts, Commercial and Admin. Law of the H. Comm. on the Judiciary,* 112th Cong. 66 (2011) (written statement of Robert Melendres, Chief Legal Officer and Corporate Secretary for International Game Technology); *id.* at 70 (written statement of Nancy L. Miller, Assistant Treasurer of Unisys Corporation).

[2] *Id.* at 2 (statement of Ranking Member Coble); *id.* at 60 (written statement of William Dunn, Senior Manager of Government Relations for the American Payroll Association).

[3] *Id.* at 17 (written statement of Jeffrey A. Porter, speaking on behalf of the American Institute of Certified Public Accountants).

[4] 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.

[5] Wis. Stat. § 71.64(6)(b) (2011).

[6] 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.").

is earned, the resident state typically provides a credit for any income taxes paid to other states.[7]

Supporters of H.R. 1864 contend that these differing thresholds have caused burdensome compliance and paperwork requirements.[8] Others assert that the differing thresholds challenge many employees who must travel for work.[9] An employee who has met a threshold in another state but was not aware of that threshold is still liable for the taxes owed. Accordingly, H.R. 1864 would prevent a state from imposing income taxes on non-residents who work 30 days or less within a calendar year in the state.[10] 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.[11]

The solution that H.R. 1864 proffers unfortunately goes too far and will consequently lead to severe state revenue losses. Specifically, the 30-day threshold would allow a non-resident employee to work *six* complete business weeks (or more than ten percent of the year) in another state and avoid an obligation to pay income taxes to that state.[12] The loss of state income tax revenue will further exacerbate budget shortfalls in many states. Indeed, 29 states have already projected or addressed budget shortfalls totaling $44 billion for fiscal year 2013.[13] States could be forced to address their increased shortfalls by shifting the tax burden onto local taxpayers through increased property, income, and sales taxes, or by cutting governmental services.

The Congressional Budget Office (CBO) estimates that the 30-day threshold imposed by H.R. 1864 will lead to revenue losses for California, Illinois, and Massachusetts, and a significant revenue loss for New York,[14] which itself estimates that its actual revenue loss would be between $95 million and $115 million starting in 2013.[15] Of note, "[t]his revenue loss is greater than the revenue im-

---

[7] *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). An employee's state of residence provides a credit for any income taxes paid to other states. *See* State Tax Guide (CCH) at 15–110 (chart) (1997) (illustrating that nearly all states with a broad-based personal income tax have enacted tax credits for income taxes paid to other states).

[8] *Hearing on H.R. 1864* at 16–18.

[9] *Id.* 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).

[10] H.R. 1864, § 2(a)(2).

[11] H.R. 1864, § 2(d)(2) (high-income individuals are excluded from the definition of "employee" and therefore the 30-day threshold would not apply to them).

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

[13] Elizabeth McNichol, *et al.,* Center on Budget and Policy Priorities, States Continue to Feel Recession's Impact, Jan. 9, 2012, *available at* http://www.cbpp.org/files/9-8-08sfp.pdf.

[14] Congressional Budget Office Cost Estimate, H.R. 1864: Mobile Workforce State Income Tax Simplification Act of 2011 (Jan. 25, 2012).

[15] Letter from Thomas H. Mattox, Commissioner of Department of Taxation and Finance, State of New York, to Representative Lamar Smith, Chairman of the House Committee on the Judiciary, and Representative John Conyers, Ranking Member of the House Committee on the Judiciary (Feb. 2, 2012) (on file with the House of Representative's Committee on the Judiciary, Democratic Staff). In his letter, Commissioner Mattox 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 2009. Nonresident wages, the base of the estimate, are grown to tax year 2013 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

pact on all other states combined."[16] For perspective, $115 million would pay the salaries for more than 1,600 teachers[17] or more than 1,900 fire fighters in New York.[18]

Several prominent organizations oppose H.R. 1864 for these and other reasons. These organizations include the American Federation of State, County and Municipal Employees, the American Federation of Teachers, the Department of Professional Employees, AFL–CIO, the International Association of Fire Fighters, the International Federation of Professional and Technical Engineers, the National Education Association, the Service Employees International Union, the Federation of Tax Administrators, and the Multistate Tax Commission.[19]

We cannot support legislation that will cause states to incur severe revenue losses, particularly in these difficult economic times and especially when a simple change to the legislation would lessen the impact on state revenues. H.R. 1864 could be substantially improved if a more reasonable threshold was established such as 14 days. Alternatively, the legislation could be made to conform with the Multistate Tax Commission's model statute, which would establish a 20-day threshold.[20] A lower threshold would ensure uniformity without severely impacting state revenues.

While H.R. 1864 is a step toward addressing a valid concern, we cannot support this legislation unless the bill's threshold period is modified to lessen its revenue impact on the states.

JOHN CONYERS, JR.
JERROLD NADLER.

○

---

includes an offset for the reduction in the resident credit New York provides to its residents who work out-of-state.

[16] *Id.*

[17] According to statistics from the National Education Association, $115 million would support the annual salaries of 1,605 teachers paid at the average annual salary of $71,633 in New York. National Education Association, Rankings of the States 2010 and Estimates of School Statistics 2011, at 19, *available at* http://www.nea.org/assets/docs/HE/NEA__Rankings__and__Estimates010711.pdf.

[18] This amount would support the annual salaries of 1,915 fire fighters paid at the average annual salary of $60,040 in New York. Bureau of Labor Statistics, Occupational Employment Statistics, Occupational Employment and Wages, 2010, *available at* http://www.bls.gov/oes/current/oes332011.htm.

[19] General Letter from the American Federation of State, County and Municipal Employees (AFSCME), American Federation of Teachers (AFT), Department of Professional Employees, AFL–CIO, International Association of Fire Fighters (IAFF), International Federation of Professional and Technical Engineers (IFPTE), National Education Association (NEA), Service Employees International Union (SEIU) (November 29, 2011); Letter from Patrick T. Carter, President of the Federation of Tax Administrators, to Member of the Committee on the Judiciary (November 16, 2011); Letter from Joe Huddleston, Executive Director of the Multistate Tax Commission, to Representative Howard Coble, Chairman of the Subcommittee on Courts, Commercial and Administrative Law of the House Committee on the Judiciary, and Representative Steve Cohen, Ranking Member of the Subcommittee on Courts, Commercial and Administrative Law of the House Committee on the Judiciary (Nov. 15, 2011) (on file with the House of Representatives Committee on the Judiciary, Democratic Staff).

[20] Multistate Tax Commission Model Mobile Workforce Statute, *available at* http://www.mtc.gov/uploadedFiles/Multistate__Tax__Commission/Uniformity/Income__Franchise/MWF%20Ex%20Com%20Memo%202-28-11.pdf.