

112TH CONGRESS
2^D SESSION

H. R. 1864

IN THE SENATE OF THE UNITED STATES

MAY 16, 2012

Received; read twice and referred to the Committee on Finance

AN ACT

To limit the authority of States to tax certain income of employees for employment duties performed in other States.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Mobile Workforce
3 State Income Tax Simplification Act of 2012”.

4 **SEC. 2. LIMITATIONS ON STATE WITHHOLDING AND TAX-**
5 **ATION OF EMPLOYEE INCOME.**

6 (a) **IN GENERAL.**—No part of the wages or other re-
7 munerations earned by an employee who performs employ-
8 ment duties in more than one State shall be subject to
9 income tax in any State other than—

10 (1) the State of the employee’s residence; and

11 (2) the State within which the employee is
12 present and performing employment duties for more
13 than 30 days during the calendar year in which the
14 wages or other remuneration is earned.

15 (b) **WAGES OR OTHER REMUNERATION.**—Wages or
16 other remuneration earned in any calendar year shall not
17 be subject to State income tax withholding and reporting
18 requirements unless the employee is subject to income tax
19 in such State under subsection (a). Income tax with-
20 holding and reporting requirements under subsection
21 (a)(2) shall apply to wages or other remuneration earned
22 as of the commencement date of employment duties in the
23 State during the calendar year.

24 (c) **OPERATING RULES.**—For purposes of deter-
25 mining penalties related to an employer’s State income tax
26 withholding and reporting requirements—

1 (1) an employer may rely on an employee’s an-
2 nual determination of the time expected to be spent
3 by such employee in the States in which the em-
4 ployee will perform duties absent—

5 (A) the employer’s actual knowledge of
6 fraud by the employee in making the determina-
7 tion; or

8 (B) collusion between the employer and the
9 employee to evade tax;

10 (2) except as provided in paragraph (3), if
11 records are maintained by an employer in the reg-
12 ular course of business that record the location of an
13 employee, such records shall not preclude an employ-
14 er’s ability to rely on an employee’s determination
15 under paragraph (1); and

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

22 (d) DEFINITIONS AND SPECIAL RULES.—For pur-
23 poses of this Act:

24 (1) DAY.—

1 (A) Except as provided in subparagraph
2 (B), an employee is considered present and per-
3 forming employment duties within a State for a
4 day if the employee performs more of the em-
5 ployee’s employment duties within such State
6 than in any other State during a day.

7 (B) If an employee performs employment
8 duties in a resident State and in only one non-
9 resident State during one day, such employee
10 shall be considered to have performed more of
11 the employee’s employment duties in the non-
12 resident State than in the resident State for
13 such day.

14 (C) For purposes of this paragraph, the
15 portion of the day during which the employee is
16 in transit shall not be considered in determining
17 the location of an employee’s performance of
18 employment duties.

19 (2) EMPLOYEE.—The term “employee” has the
20 same meaning given to it by the State in which the
21 employment duties are performed, except that the
22 term “employee” shall not include a professional
23 athlete, professional entertainer, or certain public
24 figures.

1 (3) PROFESSIONAL ATHLETE.—The term “pro-
2 fessional athlete” means a person who performs
3 services in a professional athletic event, provided
4 that the wages or other remuneration are paid to
5 such person for performing services in his or her ca-
6 pacity as a professional athlete.

7 (4) PROFESSIONAL ENTERTAINER.—The term
8 “professional entertainer” means a person who per-
9 forms services in the professional performing arts
10 for wages or other remuneration on a per-event
11 basis, provided that the wages or other remuneration
12 are paid to such person for performing services in
13 his or her capacity as a professional entertainer.

14 (5) CERTAIN PUBLIC FIGURES.—The term
15 “certain public figures” means persons of promi-
16 nence who perform services for wages or other remu-
17 neration on a per-event basis, provided that the
18 wages or other remuneration are paid to such person
19 for services provided at a discrete event, in the na-
20 ture of a speech, public appearance, or similar event.

21 (6) EMPLOYER.—The term “employer” has the
22 meaning given such term in section 3401(d) of the
23 Internal Revenue Code of 1986 (26 U.S.C. 3401(d)),
24 unless such term is defined by the State in which

1 the employee’s employment duties are performed, in
2 which case the State’s definition shall prevail.

3 (7) STATE.—The term “State” means any of
4 the several States.

5 (8) TIME AND ATTENDANCE SYSTEM.—The
6 term “time and attendance system” means a system
7 in which—

8 (A) the employee is required on a contem-
9 poraneous basis to record his work location for
10 every day worked outside of the State in which
11 the employee’s employment duties are primarily
12 performed; and

13 (B) the system is designed to allow the em-
14 ployer to allocate the employee’s wages for in-
15 come tax purposes among all States in which
16 the employee performs employment duties for
17 such employer.

18 (9) WAGES OR OTHER REMUNERATION.—The
19 term “wages or other remuneration” may be limited
20 by the State in which the employment duties are
21 performed.

22 **SEC. 3. EFFECTIVE DATE; APPLICABILITY.**

23 (a) EFFECTIVE DATE.—This Act shall take effect on
24 January 1 of the 2d year that begins after the date of
25 the enactment of this Act.

1 (b) APPLICABILITY.—This Act shall not apply to any
2 tax obligation that accrues before the effective date of this
3 Act.

Passed the House of Representatives May 15, 2012.

Attest:

KAREN L. HAAS,

Clerk.