

115TH CONGRESS  
1ST SESSION

# S. 540

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

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## IN THE SENATE OF THE UNITED STATES

MARCH 7, 2017

Mr. THUNE (for himself, Mr. BROWN, Mr. ROBERTS, Mr. BLUNT, Mr. BLUMENTHAL, Mr. TILLIS, Mr. BOOKER, Mr. PERDUE, Mr. REED, Mr. HOEVEN, Ms. STABENOW, Mr. BARRASSO, Mrs. MURRAY, Mr. HELLER, Mrs. ERNST, Mr. DONNELLY, Mr. ISAKSON, Ms. HASSAN, and Mr. BOOZMAN) introduced the following bill; which was read twice and referred to the Committee on Finance

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## A BILL

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,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Mobile Workforce  
5       State Income Tax Simplification Act of 2017”.

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

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

7 (1) the State of the employee's residence; and

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

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

21 (c) OPERATING RULES.—For purposes of deter-  
22 mining penalties related to an employer's State income tax  
23 withholding and reporting requirements—

24 (1) an employer may rely on an employee's an-  
25 nual determination of the time expected to be spent

1 by such employee in the States in which the em-  
2 ployee will perform duties absent—

3 (A) the employer's actual knowledge of  
4 fraud by the employee in making the determina-  
5 tion; or

6 (B) collusion between the employer and the  
7 employee to evade tax;

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

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

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

22 (1) DAY.—

23 (A) Except as provided in subparagraph

24 (B), an employee is considered present and per-

25 forming employment duties within a State for a

1 day if the employee performs more of the em-  
2 ployee's employment duties within such State  
3 than in any other State during a day.

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

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

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

22 (3) PROFESSIONAL ATHLETE.—The term “pro-  
23 fessional athlete” means a person who performs  
24 services in a professional athletic event, provided  
25 that the wages or other remuneration are paid to

1 such person for performing services in his or her ca-  
2 pacity as a professional athlete.

3 (4) PROFESSIONAL ENTERTAINER.—The term  
4 “professional entertainer” means a person of promi-  
5 nence who performs services in the professional per-  
6 forming arts for wages or other remuneration on a  
7 per-event basis, provided that the wages or other re-  
8 muneration are paid to such person for performing  
9 services in his or her capacity as a professional en-  
10 tertainer.

11 (5) QUALIFIED PRODUCTION EMPLOYEE.—The  
12 term “qualified production employee” means a per-  
13 son who performs production services of any nature  
14 directly in connection with a State qualified, cer-  
15 tified or approved film, television or other commer-  
16 cial video production for wages or other remunera-  
17 tion, provided that the wages or other remuneration  
18 paid to such person are qualified production costs or  
19 expenditures under such State’s qualified, certified  
20 or approved film incentive program, and that such  
21 wages or other remuneration must be subject to  
22 withholding under such film incentive program as a  
23 condition to treating such wages or other remunera-  
24 tion as a qualified production cost or expenditure.

1           (6) CERTAIN PUBLIC FIGURES.—The term  
2 “certain public figures” means persons of promi-  
3 nence who perform services for wages or other remu-  
4 nation on a per-event basis, provided that the  
5 wages or other remuneration are paid to such person  
6 for services provided at a discrete event, in the na-  
7 ture of a speech, public appearance, or similar event.

8           (7) EMPLOYER.—The term “employer” has the  
9 meaning given such term in section 3401(d) of the  
10 Internal Revenue Code of 1986 (26 U.S.C. 3401(d)),  
11 unless such term is defined by the State in which  
12 the employee’s employment duties are performed, in  
13 which case the State’s definition shall prevail.

14           (8) STATE.—The term “State” means any of  
15 the several States.

16           (9) TIME AND ATTENDANCE SYSTEM.—The  
17 term “time and attendance system” means a system  
18 in which—

19                   (A) the employee is required on a contem-  
20 poraneous basis to record his work location for  
21 every day worked outside of the State in which  
22 the employee’s employment duties are primarily  
23 performed; and

24                   (B) the system is designed to allow the em-  
25 ployer to allocate the employee’s wages for in-

1           come tax purposes among all States in which  
2           the employee performs employment duties for  
3           such employer.

4           (10) WAGES OR OTHER REMUNERATION.—The  
5           term “wages or other remuneration” may be limited  
6           by the State in which the employment duties are  
7           performed.

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

9           (a) EFFECTIVE DATE.—This Act shall take effect on  
10          January 1 of the second calendar year that begins after  
11          the date of the enactment of this Act.

12          (b) APPLICABILITY.—This Act shall not apply to any  
13          tax obligation that accrues before the effective date of this  
14          Act.

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