

## Union Calendar No.

115<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION

# H. R. 1393

[Report No. 115-]

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 HOUSE OF REPRESENTATIVES

MARCH 7, 2017

Mr. BISHOP of Michigan (for himself, Mr. JOHNSON of Georgia, Mr. SMITH of Missouri, Mr. WALKER, Mr. DUNCAN of South Carolina, Mr. MESSER, Mr. HURD, Mr. RICE of South Carolina, Mr. CICILLINE, Mr. BUCSHON, Mr. CULBERSON, Mr. McCAUL, Mrs. COMSTOCK, Mrs. WATSON COLEMAN, Mr. COOPER, Mr. DEUTCH, Mr. ROE of Tennessee, Mr. HASTINGS, Ms. JACKSON LEE, Mr. SWALWELL of California, Mr. THOMAS J. ROONEY of Florida, Mr. MARINO, Mrs. WALORSKI, and Mr. CRIST) introduced the following bill; which was referred to the Committee on the Judiciary

MARCH --, 2017

Committed to the Committee of the Whole House on the State of the Union,  
and ordered to be printed

# **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”.

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

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

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

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

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

1 (c) OPERATING RULES.—For purposes of deter-  
2 mining penalties related to an employer’s State income tax  
3 withholding and reporting requirements—

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

8 (A) the employer’s actual knowledge of  
9 fraud by the employee in making the determina-  
10 tion; or

11 (B) collusion between the employer and the  
12 employee to evade tax;

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

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

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

3 (1) DAY.—

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

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

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

22 (2) EMPLOYEE.—The term “employee” has the  
23 same meaning given to it by the State in which the  
24 employment duties are performed, except that the  
25 term “employee” shall not include a professional

1 athlete, professional entertainer, qualified production  
2 employee, or certain public figures.

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

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

17 (5) QUALIFIED PRODUCTION EMPLOYEE.—The  
18 term “qualified production employee” means a per-  
19 son who performs production services of any nature  
20 directly in connection with a State qualified, cer-  
21 tified or approved film, television or other commer-  
22 cial video production for wages or other remunera-  
23 tion, provided that the wages or other remuneration  
24 paid to such person are qualified production costs or  
25 expenditures under such State’s qualified, certified

1 or approved film incentive program, and that such  
2 wages or other remuneration must be subject to  
3 withholding under such film incentive program as a  
4 condition to treating such wages or other remunera-  
5 tion as a qualified production cost or expenditure.

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

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

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

21 (9) TIME AND ATTENDANCE SYSTEM.—The  
22 term “time and attendance system” means a system  
23 in which—

24 (A) the employee is required on a contem-  
25 poraneous basis to record his work location for

1 every day worked outside of the State in which  
2 the employee's employment duties are primarily  
3 performed; and

4 (B) the system is designed to allow the em-  
5 ployer to allocate the employee's wages for in-  
6 come tax purposes among all States in which  
7 the employee performs employment duties for  
8 such employer.

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

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

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

17 (b) APPLICABILITY.—This Act shall not apply to any  
18 tax obligation that accrues before the effective date of this  
19 Act.