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

IN THE SENATE OF THE UNITED STATES
February 5, 2015
Mr. THUNE (for himself, Mr. BROWN, Mr. PORTMAN, and Mr. BLUNT) introduced the following bill; which was read twice and referred to the Committee on Finance

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

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.
This Act may be cited as the “Mobile Workforce State Income Tax Simplification Act of 2015”.

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 employ-
ment 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 penalties related to an employer’s State income tax withholding and reporting requirements—

(1) an employer may rely on an employee’s annual 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 em-
ployee’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 non-
resident State during one day, such employee
shall be considered to have performed more of
the employee’s employment duties in the non-
resident 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 “pro-
fessional 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 ca-

cacity as a professional athlete.

(4) **PROFESSIONAL ENTERTAINER.**—The term
“professional entertainer” means a person who per-
forms 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 promi-
ence who perform services for wages or other remu-
neration 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 na-
ture 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 performed; and

(B) the system is designed to allow the employer 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 second 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.