

Colorado General Assembly to consider mobile workforce legislation

February 14, 2013

In brief

Introduced on January 18, 2013, House Bill 1143 would generally adopt the Multistate Tax Commission's 2011 model mobile workforce statute exempting from state income tax and related withholding certain wages and salary income earned by a nonresident individual within the state. H.B. 1143 would be applicable to income received by a nonresident performing duties in Colorado in years beginning on or after January 1, 2014. [Colorado [H.B. 1143](#), introduced 1/18/13]

In detail

As introduced, H.B. 1143 generally provides that compensation otherwise subject to Colorado income tax withholding is exempt from state income tax and related withholding provided that the compensation is received by a nonresident individual for employment duties performed in the state and:

- the nonresident has no other Colorado source income
- the nonresident is present and performing employment duties for not more than twenty days during the tax year in which the compensation is received

(presence in Colorado for any part of the day constitutes presence for that day unless such presence is purely for purposes of transit through the state), and

- the nonresident's state of residence provides a substantially similar de minimis standard or does not impose an individual income tax.

Professional athletes, professional entertainers, construction workers, and certain 'key employees,' and individuals of "prominence who perform services for compensation on a per-event basis" are not afforded the

twenty day threshold period prior to compensation being subject to Colorado withholding.

Generally, if a nonresident's only source of income is that which is exempt from withholding as described above, that nonresident has no Colorado tax liability and is not required to file a Colorado return.

The number of days that a nonresident employee is considered present in Colorado would include all days that the nonresident employee is present and performing duties in the state on behalf of the employer and any other related person, including affiliated entities.

The takeaway

While this bill tracks closely with the Multistate Tax Commission's model mobile workforce statute, it bears some significant differences from the federal Mobile Workforce State Income Tax Simplification Act introduced in 2011. For example:

- the federal act proposed a thirty day de minimis standard, while H.B. 1143 provides for a twenty day standard

- H.B. 1143 excludes construction workers and individuals of prominence from the safe harbor
- H.B. 1143 includes days employed by a related entity to count towards a nonresident's total Colorado days

Additionally, H.B. 1143 provides that its provisions do not "affect the imposition of, or this state's jurisdiction to impose, income tax or any other tax on any taxpayer." This language mirrors provisions found in the MTC's model statute. In other words, there's no intent to extend the bill's safe harbor into other tax areas.

Despite the state withholding safe harbor provided by H.B. 1143, employers still need to be mindful of local business occupation taxes that certain localities require to be withheld and/or paid.

It is our understanding that there are lobbying efforts underway supporting the amendment of H.B. 1143 to incorporate provisions of the federal act. We will closely monitor this bill and report on significant developments as it moves through the legislative process.

Let's talk

If you have any questions about the Colorado proposed mobile workforce statute, please contact:

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