

US House Judiciary Subcommittee holds hearing on Mobile Workforce Act

May 1, 2014

In brief

On April 29, 2014, the House Judiciary Subcommittee on Regulatory Reform, Commercial and Antitrust Law held a hearing on [H.R. 1129](#), the Mobile Workforce State Income Tax Simplification Act of 2013. The legislation would prohibit the wages or other remuneration earned by an employee who performs employment duties in more than one state from being subject to income tax in any state other than the state of the employee's residence and the state within which the employee is present and performing employment duties for more than 30 days during the calendar year.

In detail

Three witnesses testified in support of H.R. 1129: [Ms. Maureen Riehl](#), Vice President of Government Affairs for the Council On State Taxation, on behalf of COST and the [263-member coalition](#) of supporting organizations; [Mr. Jeffrey Porter](#), sole practitioner, on behalf of the American Institute of Certified Public Accountants; and [Ms. Lori Brown](#), Director, Disbursements, CACI International, Inc., on behalf of the American Payroll Association.

One witness testified in opposition to the legislation: [Mr. Patrick Carter](#), Director, Division of Revenue for the State of Delaware, on behalf of the Federation of Tax Administrators.

A widespread problem

Ms. Riehl noted that the varying and inconsistent state standards for employees to file personal income tax returns when temporarily working in nonresident states and for employers to withhold income tax on these employees is a problem faced every day by hundreds of thousands of people across the country. Ms. Riehl noted that the simple answer to this widespread problem is to enact a federal threshold for nonresident filing requirements of thirty days for temporary employee work assignments to nonresident states. She referenced prior Congressional action in this area for airline, motor carrier, and military personnel. While acknowledging a state-initiated

solution proposed by the Multistate Tax Commission through enactment of a [model statute](#) could provide a basis for a national standard, it would require many years and perhaps decades to accomplish. Indeed, only one state, North Dakota, has adopted the model statute since its approval by the Commission in 2011.

Inconsistent state income tax and withholding rules

Mr. Porter focused his comments on the inconsistent personal income tax treatment of nonresidents. He noted some states have a de minimis number of days threshold that must be passed before subjecting a nonresident to tax, while other states set an earnings amount as their standard. These thresholds are

not administered in a uniform manner and may change each year. As a practitioner who prepares a significant number of individual income tax returns, Mr. Porter was acutely aware of the administrative burden and complexities faced by employers navigating myriad withholding rules and by employees filing returns in multiple states, often for minimal tax amounts or to claim a refund of the withheld taxes.

Burdens placed on employers and employees

Ms. Brown commented on the burdens the current system places on multistate employers. Not only are they required to withhold taxes in the resident states, they also may have to register for withholding accounts (and withhold and accumulate tax prior to the registration process completion) in states to which their employees travel. They have to make sure they are in compliance with each of these states' unique rules. In addition, they have the burden of tracking each employee's work locations and the time spent in each one. In most cases, the tracking is a manual process. Often, state withholding is deducted and state income tax returns are filed for individuals who will be refunded the entire amount withheld. A great deal of time and money is spent with no positive return for the state, employer, or employee.

Ms. Brown also expressed concern about the impact today's system has on the employer/employee relationship. As an example, she noted that in some cases, an employee may travel to a state that imposes a higher rate of tax than the resident state. Many employers do not have the capacity to make the employee whole and, as a result, paychecks are less than expected.

Fundamental tax principles and tax avoidance

Mr. Carter, the sole opposition witness, noted that a fundamental principle of income taxation is that income should be taxed where it is earned. According to Mr. Carter, abandonment of this 'source' principle will allow individuals to avail themselves of a state's economic marketplace without paying for that benefit. In addition, the legislation as drafted will present opportunities for workers who work or reside in non-tax jurisdictions to improperly shift income into those jurisdictions. Mr. Carter also expressed concern about allowing employers to rely on employees' estimates rather than the company records. Another concern conveyed was that certain terms and provisions are ambiguous, such as the term 'employment duties,' which may lead to litigation.

Mr. Carter responded to Ms. Riehl's point about a state initiated solution, saying that this solution may not have had the needed support because industry groups have focused their efforts instead on the federal legislation.

Question and answer session

Under questioning, Mr. Carter agreed with Rep. Johnson (D-GA) that it is difficult for employers to keep track of employees. When asked what he thought the threshold period should be, Mr. Carter said that a 20-day period should be used rather than the 30-day threshold found in the legislation. Mr. Carter also agreed with Rep. DelBene (D-WA) that a voluntary state solution would be a challenge to accomplish.

Rep. Bachus (R-AL), subcommittee chairman, noted that emergency workers travel to nonresident states for the benefit of the residents of that state. They pay a host of taxes while in

the nonresident state, including sales tax, lodging tax, and gas tax. Rep. Bachus questioned whether the workers' home state should lose the individual income tax to a state that is also receiving all these other taxes and benefits. Mr. Carter noted that a number of states, including his home state of Delaware, exempt from income tax nonresident emergency workers who are in the state because of a national or state declared disaster.

Rep. Jeffries (D-NY) opined that the legislation is inconsistent with notions of federalism. He pointed out that each state should be able to determine its own form of taxation. He noted that New York City likely has more nonresidents performing temporary employment duties than any other location in the country. Since these nonresidents receive police and fire protection and enjoy other benefits of the state and city's economic marketplace, the provisions found in HR 1129 are fundamentally unfair.

Rep. Johnson concluded the hearing by acknowledging that a few states may lose revenue under the provisions of the Mobile Workforce legislation, but Congress has to consider the greater good of the country.

The takeaway

During the prior Congress, identical legislation to H.R. 1129 passed on a voice vote by the US House of Representatives. The current legislation has the support of over 260 organizations and enjoys significant bipartisan support in both the House and Senate under companion legislation, [S. 1645](#).

Let's talk

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