

THE
NATIONAL LAW REVIEW

Bill to Simplify State Tax Withholding on Mobile Workers Passes House

Monday, October 17, 2016

A bill that would simplify state income tax compliance for employers when they send employees on temporary assignment to another state passed the House on Sept. 21. Many state government interests oppose the bill, so its future in the Senate is uncertain.

Employers face a major state tax compliance headache when they send an employee on a short-term assignment to another state (the Taxing State). The Taxing State typically requires the employer to withhold state income taxes for the portion of the employee's wages earned while performing services there, on a prorated basis. Most states do not provide a de minimus rule, so technically an employer is required to withhold for the amount paid to an employee even on a short-term business trip. This can create an enormous administrative burden for many companies.

[The Mobile Workforce State Income Tax Simplification Act \(H.R. 2315\)](#) would ease this burden by saying that the Taxing State may require an employer to withhold state income taxes only if the employee spends more than 30 days performing services for an employer in that state in any calendar year. This may seem like a rather short time frame, but currently many states demand withholding if an employee works only a handful of days there.

The bill has several rules to help calculate when an employee is considered to be employed in a state. For example, if the employee travels to several states in a day, it only counts as a day of service for the state where the employee performs most of his or her services. Time spent in transit is not counted as a part of a day in any state. The employer may rely on the employee's determination of the amount of time spent in another state, unless the employer knows that the employee's time estimates are not accurate, or the employer and employee are colluding to evade state income tax requirements.

These rules would not apply to professional athletes, entertainers, or certain public figures who are paid appearance fees, who will have to comply with state income tax requirements that would require tax payments even for a single work day in a Taxing State.

It is important to note that if this bill becomes law, it would protect companies only from withholding tax obligations on wages paid to employees – it would not protect a company from becoming subject to another state's taxing jurisdiction for the company's state income tax or sales tax obligations. Other pending bills in Congress address this issue.

The bill now goes on the Senate, where its prospects in a lame duck session are uncertain. Some senators have been critical of the bill, saying that it impinges on state sovereignty, and would reduce revenues for many states.

© 2019 Greenberg Traurig, LLP. All rights reserved.

Source URL: <https://www.natlawreview.com/article/bill-to-simplify-state-tax-withholding-mobile-workers-passes-house>



Article By [Greenberg Traurig, LLP](#)
[Marvin A. KirsnerL&E Blog](#)

[Labor & Employment](#)
[Tax](#)
[All Federal](#)