

115TH CONGRESS  
1ST SESSION

**S.** \_\_\_\_\_

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

---

Mr. THUNE (for himself and Mr. BROWN) introduced the following bill; which  
was read twice and referred to the Committee on \_\_\_\_\_

---

## 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-

1 ment duties in more than one State shall be subject to  
2 income tax in any State other than—

3 (1) the State of the employee's residence; and

4 (2) the State within which the employee is  
5 present and performing employment duties for more  
6 than 30 days during the calendar year in which the  
7 wages or other remuneration is earned.

8 (b) WAGES OR OTHER REMUNERATION.—Wages or  
9 other remuneration earned in any calendar year shall not  
10 be subject to State income tax withholding and reporting  
11 requirements unless the employee is subject to income tax  
12 in such State under subsection (a). Income tax with-  
13 holding and reporting requirements under subsection  
14 (a)(2) shall apply to wages or other remuneration earned  
15 as of the commencement date of employment duties in the  
16 State during the calendar year.

17 (c) OPERATING RULES.—For purposes of deter-  
18 mining penalties related to an employer's State income tax  
19 withholding and reporting requirements—

20 (1) an employer may rely on an employee's an-  
21 nual determination of the time expected to be spent  
22 by such employee in the States in which the em-  
23 ployee will perform duties absent—

1           (A) the employer's actual knowledge of  
2 fraud by the employee in making the determina-  
3 tion; or

4           (B) collusion between the employer and the  
5 employee to evade tax;

6           (2) except as provided in paragraph (3), if  
7 records are maintained by an employer in the reg-  
8 ular course of business that record the location of an  
9 employee, such records shall not preclude an employ-  
10 er's ability to rely on an employee's determination  
11 under paragraph (1); and

12           (3) notwithstanding paragraph (2), if an em-  
13 ployer, at its sole discretion, maintains a time and  
14 attendance system that tracks where the employee  
15 performs duties on a daily basis, data from the time  
16 and attendance system shall be used instead of the  
17 employee's determination under paragraph (1).

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

20           (1) DAY.—

21           (A) Except as provided in subparagraph  
22 (B), an employee is considered present and per-  
23 forming employment duties within a State for a  
24 day if the employee performs more of the em-

1           employee’s employment duties within such State  
2           than in any other State during a day.

3           (B) If an employee performs employment  
4           duties in a resident State and in only one non-  
5           resident State during one day, such employee  
6           shall be considered to have performed more of  
7           the employee’s employment duties in the non-  
8           resident State than in the resident State for  
9           such day.

10          (C) For purposes of this paragraph, the  
11          portion of the day during which the employee is  
12          in transit shall not be considered in determining  
13          the location of an employee’s performance of  
14          employment duties.

15          (2) EMPLOYEE.—The term “employee” has the  
16          same meaning given to it by the State in which the  
17          employment duties are performed, except that the  
18          term “employee” shall not include a professional  
19          athlete, professional entertainer, qualified production  
20          employee, or certain public figures.

21          (3) PROFESSIONAL ATHLETE.—The term “pro-  
22          fessional athlete” means a person who performs  
23          services in a professional athletic event, provided  
24          that the wages or other remuneration are paid to

1 such person for performing services in his or her ca-  
2 pacity as a professional athlete.

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

11 (5) QUALIFIED PRODUCTION EMPLOYEE.—The  
12 term “qualified production employee” means a per-  
13 son who performs production services of any nature  
14 directly in connection with a state qualified, certified  
15 or approved film, television or other commercial  
16 video production for wages or other remuneration,  
17 provided that the wages or other remuneration paid  
18 to such person are qualified production costs or ex-  
19 penditures under such state’s qualified, certified or  
20 approved film incentive program, and that such  
21 wages or other remuneration must be subject to  
22 withholding under such film incentive program as a  
23 condition to treating such wages or other remunera-  
24 tion as a qualified production cost or expenditure.

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

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

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

16          (9) TIME AND ATTENDANCE SYSTEM.—The  
17          term “time and attendance system” means a system  
18          in which—

19                 (A) the employee is required on a contem-  
20                 poraneous basis to record his work location for  
21                 every day worked outside of the State in which  
22                 the employee’s employment duties are primarily  
23                 performed; and

24                 (B) the system is designed to allow the em-  
25                 ployer to allocate the employee’s wages for in-

1           come tax purposes among all States in which  
2           the employee performs employment duties for  
3           such employer.

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

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

9           (a) EFFECTIVE DATE.—This Act shall take effect on  
10          January 1 of the 2d calendar year that begins after the  
11          date of the enactment of this Act.

12          (b) APPLICABILITY.—This Act shall not apply to any  
13          tax obligation that accrues before the effective date of this  
14          Act.