

## Income/Franchise:

### Federal: Mobile Workforce State Income Tax Simplification Bill Remains Pending in US House

*H.R. 429*, introduced in House 1/21/21 and referred by House Judiciary Committee to Subcommittee on Antitrust, Commercial, and Administrative Law 3/5/21. Legislation known as the “Mobile Workforce State Income Tax Simplification Act of 2021” remains pending in the US House of Representatives which, if enacted, would “limit the authority of States to tax certain income of employees for employment duties performed in other States.” This pending legislation is similar to bills that were introduced in the House and Senate in 2020 and 2019 [see H.R. 5674 (2020), H.R. 4796 (2019) and S. 604 (2019) for details on these earlier bills], as well as legislation that was approved by the House in 2017 [see H.R. 1393, approved by US House of Representatives on 6/20/17]. If enacted, the legislation would create a bright-line standardized 30-day threshold to determine nonresident state income tax liability so that:

**URL:** <https://www.congress.gov/bill/117th-congress/house-bill/429/all-actions?s=7&r=1524>

**URL:** <https://www.congress.gov/bill/116th-congress/house-bill/5674?s=3&r=11>

**URL:** <https://www.congress.gov/bill/116th-congress/house-bill/4796>

**URL:** <https://www.congress.gov/bill/116th-congress/senate-bill/604/actions?q=%7B%22search%22%3A%5B%22s604%22%5D%7D&r=1&s=4>

**URL:** <https://www.congress.gov/bill/115th-congress/house-bill/1393/actions>

1. Employees clearly understand when they are liable for nonresident state income taxes, and
2. Employers are able to accurately withhold these state individual income taxes.

The pending federal legislation generally attempts to simplify and standardize tax filing for employees and employers that conduct business in multiple states. More specifically, the pending federal legislation would limit state taxation of the wages or other remuneration of any employee who performs duties in more than one state to:

1. The state of the employee’s residence; and
2. The state(s) in 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.”

The bill generally applies these same standards to an employer’s withholding and reporting requirements.

Under this pending federal legislation, an employer could rely on an employee’s annual determination of the time he or she spends in each state during the year (in the absence of underlying fraud or collusion by such employee) – unless the employer maintains a “time and attendance system” that records and tracks where employees perform their daily duties. In the latter case, this “time and attendance system” must be used to determine the number of days an employee works in each state.

For purposes of this pending bill, the term employee generally excludes professional athletes, professional entertainers, production employees who perform services in connection with certain film, television, or other

commercial video productions, and public figures who are persons of prominence who perform services for wages or other remuneration on a per-event basis. Please contact us with any questions.

— Valerie Dickerson (Washington, DC)  
Partner  
Deloitte Tax LLP  
vdickerson@deloitte.com

Gregory Bergmann (Chicago)  
Partner  
Deloitte Tax LLP  
gbergmann@deloitte.com

Joe Garrett (Birmingham)  
Managing Director  
Deloitte Tax LLP  
jogarrett@deloitte.com

Olivia Schulte (Washington, DC)  
Manager  
Deloitte Tax LLP  
oschulte@deloitte.com

This document contains general information only and Deloitte is not, by means of this document, rendering accounting, business, financial, investment, legal, tax, or other professional advice or services. This document is not a substitute for such professional advice or services, nor should it be used as a basis for any decision or action that may affect your business. Before making any decision or taking any action that may affect your business, you should consult a qualified professional advisor. Deloitte shall not be responsible for any loss sustained by any person who relies on this document.

#### **About Deloitte**

Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited, a UK private company limited by guarantee (“DTTL”), its network of member firms, and their related entities. DTTL and each of its member firms are legally separate and independent entities. DTTL (also referred to as “Deloitte Global”) does not provide services to clients. In the United States, Deloitte refers to one or more of the US member firms of DTTL, their related entities that operate using the “Deloitte” name in the United States and their respective affiliates. Certain services may not be available to attest clients under the rules and regulations of public accounting. Please see [www.deloitte.com/about](http://www.deloitte.com/about) to learn more about our global network of member firms.