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An Update Regarding the Mobile Workforce State Income Tax Fairness and Simplification Act

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State tax administrators, employees that travel for work purposes, and companies employing those traveling employees all share significant interest in the passage of the pending Mobile Workforce State Income Tax Fairness and Simplification Act (H.R. 3359) (the "Act"). The interests of the parties, however, are not aligned to pass the Act in its current form. Whether the Act eventually becomes law will largely depend upon whether compromises will be made by those parties with competing interests. Of course, the Act also has to capture the necessary level of attention from Congress.

Currently, the rules vary widely from state to state with respect to when a nonresident individual is subject to tax and must file an income tax return. For example, some states apply a threshold based on the number of days that an individual performs services in a state, while others apply a minimum dollar threshold. These varying rules have an impact on both employees and employers. Employers have a responsibility to withhold from employee wages based on the diverse rules. Employees, likewise, may have multi-state filing responsibilities that vary from state to state and year to year. The current state of the law creates significant administrative and compliance burdens for both employers and employees.

The primary goal of the Act is to decrease the chaos that exists among the states with respect to nonresident personal income tax and withholding requirements by establishing uniform rules. In its current form, the Act would create a 60-day threshold for imposition of income tax by states on nonresident individuals. Specifically, an individual working in a particular state for more than 60 days in a calendar year would be subject to personal income tax in that state.

Individuals and corporations largely applaud and support the Act because its passage would create uniformity, certainty, and significantly reduce or eliminate the administrative burden of multi-state filings (e.g., personal income tax returns and income tax withholding returns for corporate employers). Conversely, state tax administrators argue against the Act because of potentially significant revenue losses and the impairment of state sovereignty.

The state with the biggest stake in the debate is New York. The geography of New York is such that individuals from surrounding states (*i.e.*, Connecticut, New Jersey, and Pennsylvania) frequently travel to, or are employed by New York based businesses. While there are certainly New York residents that travel to surrounding states for work purposes, the net result is that significantly more employees travel into New York than travel out of New York for work. New York law does not contain a requirement for a minimum number of days that a nonresident individual must be present in the state before being subject to tax. Therefore, instituting a threshold based on any number of days would result in a loss of tax dollars for New York.

The New York State Department of Taxation and Finance Commissioner, Robert Megna, recently stated that the Department estimates \$150 million in tax revenue would be lost with the imposition of a 60-day threshold. According to Commissioner Megna, New York is strongly opposed to the 60-day threshold, would prefer a significantly lower threshold (even if reduced to 20 days, New York would suffer an estimated \$50 million loss of revenue) and is currently reviewing New York's law in light of the pending legislation. The possibility exists that New York may revise its law prior to passage of the Act.

As for predicting the likelihood of the Act becoming law, there are formidable obstacles facing its proponents. Congress is currently in an election year, pressured with passing a comprehensive energy bill, and in the midst of historical financial turmoil in the country's financial markets. Should Congress not rule on the Act this session, we will likely see the Act reintroduced in the same or similar form during the next session of Congress.



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