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Tax Policy

Income tax compliance for mobile workers can be challenging. Their wages are taxed in 43 states, and the District of Columbia. Rules for when returns must be filed, how taxes are determined, and methods for withholding, vary by state. Federal legislation has been introduced to help simplify these rules. In this article, Ryan LLC's Mindy Mayo discusses these challenges and how the Mobile Workforce State Tax Simplification Act of 2017 may help to alleviate these challenges.

If At First You Don't Succeed, Try Again, and Again, and Again



BY MINDY MAYO

On June 20, 2017, the U.S. House of Representatives passed the Mobile Workforce State Income Tax Simplification Act of 2017 (H.R. 1393). This bill was first introduced in 2006, and it has passed the U.S. House before, but it has yet to advance to the Senate. Bill supporters

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are hoping that this submission will be different, and the bill will make its way through the Senate. The bill, which has been supported by the American Institute of Certified Public Accountants (AICPA), as well as the American Payroll Association (APA), would help alleviate the burden employers and employees experience when dealing with inconsistent state income tax laws when working in multiple states.

Many Challenges

Employers face many challenges when they have multiple businesses in different states, or when they have one company but conduct work in multiple states. States currently have inconsistent standards for employees to file personal income tax returns when traveling to a nonresident state for a temporary period of time. There are also varying methods or requirements for state income tax withholding by employers when they have employees who travel outside of their state of residence for temporary periods. The Mobile Workforce State Income Tax Simplification Act of 2017 ("the Act") was designed to solve both of these issues.

Uniform Threshold

The Act provides for a uniform 30-day threshold before liability attaches and state income tax withholding is required. After 30 days, existing state law would apply. Currently, 43 states and the District of Columbia have a personal income tax on wages. How these taxes

are determined varies by state. Some states have a days worked in-state threshold. Various thresholds exist, depending upon the state. Some states have a 15-day threshold; another state has a 59-day threshold. Other states may have a de minimis exception based on wages earned. Wisconsin, for example, has a \$1,500 threshold annually, while Oklahoma has a \$300 per quarter threshold. Some state thresholds may be tied to personal exemptions by state, standard deductions, or filing thresholds, all of which may change annually. Some states initiate state withholding when the employee enters the state, Day 1. These rules complicate the current administration of withholding rules. The Act is designed to alleviate the confusion and simplify the process for employers who have traveling employees.

Some States Gain, Lose Revenue

The Congressional Budget Office (CBO) has prepared a cost estimated for the Act and has concluded that its enactment would not increase net direct spending or on-budget deficits. The CBO has stated that the “states that have large employment centers close to a state border would lose the most revenue; states from which employees tend to commute would gain revenue.” For example, Illinois, Massachusetts, California, and New York would face losses, with New York probably losing the largest amount of revenue. In contrast, New Jersey would probably gain revenue. Because

states tax income at different rates and on different tax bases, the changes in tax revenues nationwide would not net to zero.

Employer Recordkeeping

As the Act has marched closer to passage than it ever has, employers should now be considering how to comply should this legislation be enacted. The simplification of the rules around when someone is subject to withholding does not solve the administrative issue of actually knowing where your traveling workers are performing services. Many employers simply do not have the recordkeeping ability to know where their employees are working each time period. This would be a great roadblock in instituting any type of withholding program, regardless of whether the threshold is simplified and similar for all of the states.

One of the first steps in investigating your level of compliance, should the Act be passed, is to look at your traveling population. Who travels, where, and for how long? Once you have your population, you can hopefully determine if they trip the 30-day threshold that is proposed under the Act. If they do, and withholding is required, do you have the ability to withhold? Are you a registered employer in the states where the worker is now subject? Can you track where the work is and when they are hitting the threshold in any particular state? All of these questions exist when you are dealing with a traveling workforce.