



American Payroll Association

Government Relations • Washington, DC

May 25, 2011

**Statement for the Record Submitted to
House Judiciary Subcommittee on Courts, Commercial and Administrative Law
In support of HR 1864, the Mobile Workforce State Income Tax Simplification Act of 2011**

The Honorable Howard Coble, Chairman
The Honorable Steve Cohen, Ranking Member
Subcommittee on the Courts, Commercial and Administrative Law
Committee on the Judiciary
United States House of Representatives
517 Cannon House Office Building
Washington, DC 20515

Dear Chairman Coble and Ranking Member Cohen,

Thank you for the opportunity to submit this statement for the record for the May 25, 2011 hearing on H.R. 1864 on behalf of the American Payroll Association. APA strongly supports H.R. 1864 and encourages you to move it swiftly through the Subcommittee.

APA is a non-profit professional association with more than 20,000 members. Most of our members are the payroll managers for their employers, and some of our members work for payroll service providers, who in turn process the payrolls of another 1.5 million employers.

In addition, APA itself is a small employer with 75 employees in 10 states. APA employees travel regularly among the 50 states providing educational services to payroll professionals.

Inconsistent State Rules

Of the 41 states with income tax withholding, most tax all wages earned within their borders by residents of other states. Some have varying de minimis amounts, or thresholds, that need to be exceeded before withholding is required. The thresholds differ widely, including various numbers of days worked within the state and various wage amounts earned.

Just as the United States taxes its citizens and residents on their worldwide income, so do the states impose a tax on their residents who earn income outside their borders. If the employer has nexus – that is, a business connection – within the employee's state of residence, it generally must withhold tax for the state of residence in addition to the state in which the services are performed. The states vary on their requirement to withhold tax from their residents who work elsewhere. Some want full withholding, some want withholding only if there is no withholding being taken for the state in which the services are performed, and some want withholding less a credit for whatever withholding is taken for the state in which the services are performed. And then besides the withholding requirement, each state also has its own requirement for reporting the wages on Form W-2.

It is the duty of payroll professionals to ensure that taxation is happening properly for the state in which the employee is working as well as the state in which the employee claims residency.

Each state's rule about how it taxes nonresidents who work within its borders is different. And each state's rule or rules about how it taxes its own residents who work elsewhere is different and often depends upon what the nonresident state requires.

So, what an employer does for a California resident who temporarily goes to work in New York is completely different from what is done for the same employee if he or she goes to work in New Jersey or Georgia. And the rules are again entirely different if the employer sends an Oregon resident to temporarily work in New York, New Jersey, or Georgia. Each pairing of states has different rules.

The current process is not only burdensome but costly to both employees and employers.

Employer Issues

Businesses would benefit a great deal and in many ways by the establishment of a uniform threshold of time to be exceeded before nonresident income tax withholding is required. It will allow businesses to remove many employees from the costly nonresident withholding process and to focus compliance efforts and education on the remaining few. In addition, it will be much easier to comply with a single standard across all the states and localities compared with the patchwork of laws in the 41 states and thousands of localities with income tax withholding.

Employers will be able to avoid the expensive process of withholding taxes and filing Forms W-2 for multiple states in which an employee will spend only a short amount of time. To the extent that a business's employees perform services in a particular state, but no single employee spends enough time in that state to exceed the threshold, the business will never be faced with the costs of:

- registering for a withholding tax account in that state,
- setting up that state's withholding tables in its payroll system,
- learning that state's withholding tax laws and regulations,
 - determining which benefits are taxable wages and
 - determining the depositing and filing due dates
- withholding that state's tax,
- depositing those taxes,
- filing employment tax returns, or
- filing Forms W-2 with that state.

Currently, an employer has to perform all the above tasks – many on very short order – the moment any employee begins to perform services in a new state (unless it is one of the few states that has a threshold to be exceeded, a state that has a reciprocal agreement with the employee's state of residence, or a state without an income tax).

After the systemic hurdles are overcome, the payroll department deals with many questions (and sometimes suffers protestations) from employees who are seeing a new state's tax withheld from their paychecks, sometimes in addition to taxes still being withheld for the state of residence, and has to explain to the employees that they will have to file a personal income tax return for that state.

These tasks add great expense to a business's payroll department budget. A lot of time and resources can be spent on the relative few employees who are doing this sort of business travel compared with the broader employee base. Sometimes, to appease or compensate employees who travel throughout many states for which withholding is taken, an employer will pay for the preparation of all those nonresident income tax returns. Since tax preparation assistance is a taxable benefit, the employer must add the value of it to the employees' wages, and, to save the employees from an additional tax burden, many employers will pay the taxes on that benefit. Some employers will go so far as to reimburse the employee for any extra taxes he or she is paying as a result of working in multiple states (compared with the tax he or she would have paid had the employer not required services to be performed outside the resident state). Such a reimbursement is also a taxable benefit.

Here's an example of the cost borne by just one employer, drawn from the experience of an APA member: The employer has 5,000 employees, but only 250 of them work in multiple states. For the past few years, the company spent approximately \$50,000 for tax preparation assistance provided to employees and approximately \$60,000 in salary for time spent by payroll and human resource staff for the special handling of its mobile workforce. That's \$110,000 for the management of only 250 out of 5,000 employees.

Taxpayer Issues

The individual taxpayer, or employee, who does not spend enough time in another jurisdiction to exceed the proposed uniform threshold would also benefit from the passage of HR 1864, in terms of expense, cash flow, and filing burden.

Currently, if an employee performs temporary service in another state without a threshold but with a higher tax rate than that of the state of residence, he or she suffers an irretrievable increase in tax expense. This is especially true if the employee's home state doesn't have an income tax.

However, even if the two states have a very similar tax structure, the employee can suffer a significant cash flow problem if the resident state requires simultaneous full withholding of its tax (that is, no credit is allowed for the withholding for the worked-in state). When the employee files a personal income tax return with the resident state, a credit will be allowed for the tax liability to the worked-in state, and the employee can get a refund, but that can be well over a year after the tax was originally withheld.

In addition, the employee will have to file a personal income tax return in the nonresident state(s). Each state has its own tax rules, forms, and filing processes. Many employees in these situations hire a tax professional and bear the expense of paying someone to do this for them.

What is especially wasteful in the case of an employee who spends a short amount of time in another state is that he or she will very possibly have earned less than the threshold of income that is even subject to that state's tax. In such a situation, the employee, of course, has to file a state personal income tax return and will likely get a refund of all of that withholding.

So, because there is no uniform threshold of time to be exceeded before nonresident income tax withholding is required, employers must withhold tax and report wages, employees must file income tax returns, and states must process wage reports and income tax returns of individuals for whom they will refund all taxes withheld. That's a lot of time, effort, and burden with no positive return for the employer, the employee, or the state.

The American Payroll Association and its 20,000 members strongly recommend that you support this legislation so that the burden and cost of administering multistate taxes by American workers and American businesses can be reduced and so that we can ensure fair and consistent handling of this employment issue and the related taxes across the nation.

More employers will comply with a law that is uniform across all states and localities and that is federally supported, versus the current patchwork of laws.

Sincerely,

William Dunn, CPP
Senior Manager of Government Relations
American Payroll Association