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Testimony to the Multistate Tax Commission

Proposed Model Mobile Workforce Withholding and Individual Income Tax Statute

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Thank you once again for the opportunity to provide testimony to the Multistate Tax Commission (MTC) on behalf of the Council On State Taxation (COST) regarding the MTC's proposed Model Mobile Workforce Withholding and Individual Income Tax Statute ("Model Statute"). COST appreciates the significant efforts made by the MTC on this important project and strongly urges the MTC to set the "day threshold" in the Model Statute at 30 days.

About COST

COST is a nonprofit trade association based in Washington, DC. COST was formed in 1969 as an advisory committee to the Council of State Chambers of Commerce and today has an independent membership of nearly 600 major corporations engaged in interstate and international business. COST's objective is to preserve and promote the equitable and nondiscriminatory state and local taxation of multijurisdictional business entities.

The Day Threshold Must be Lengthened to 30 Days

Legislation introduced during both the 109th and 110th Congress addressing the taxation of nonresident employees set a threshold of 60 days below which nonresidents would not be subject to personal income tax in a state. After careful consideration and deliberation, the threshold was set at 60 days because it struck an appropriate balance between two goals: 1) to provide administrative simplification for employees and employers; and 2) to minimize disruptions to state revenue flows. The 60-day threshold is far shorter than any other law Congress has enacted in this area, most of which provide for full preemption. Importantly, a 60-day threshold would have a net fiscal impact on the states as a whole of less than $100 million annually.

Despite this careful balancing, the MTC opposed the 60-day threshold as too long. As part of extensive negotiations between the employer community and representatives of the states, Rep. Hank Johnson (D-GA) determined that a 30-day threshold was an appropriate compromise, and he introduced legislation to that effect in the 111th Congress (H.R. 2110). As an aside, H.R. 2110 includes numerous other changes from prior federal legislation that were included at the request of representatives of state and local governments.

Based on a survey of employers conducted by COST, the 30-day threshold more than doubled the number of employees that would be subject to nonresident taxation (when compared against the number that would be subject to tax under a 60-day threshold). On the positive side, the lower threshold also reduces the net fiscal impact on the states as a whole to approximately $40 million annually.

The MTC's Model Statute sets the day threshold at 20 days. Based on information available to COST, a 20-day threshold would again nearly double the number of employees subject to tax (when compared to a 30-day threshold). In the context of a model statute to be adopted at the state level, the MTC should feel no need to set such a low threshold. There is likely no fiscal impact at stake even if a substantially higher threshold is selected because of the reciprocity provision in the Model Statute. Of equal importance, if the Model Statute creates a fiscal impact, state legislatures will debate whether the fiscal impact is acceptable when compared to the benefits provided to their state residents. Several states already provide thresholds for nonresidents in excess of 20 days without any apparent deleterious impact, fiscal or otherwise. Furthermore, dozens of reciprocal agreements exist between states that provide for total exemptions from tax—no thresholds, day, dollar or otherwise. A 30-day threshold is the minimum that should be included in the Model Statute.

Conclusion

As noted in our previous testimony, there are several areas in the Model Statute where COST would support further modifications (e.g., the definition of a "day" and the employer reliance standard). These areas, although important, do not critically impair the Model Statute. The insufficient day threshold must be remedied if the Model Statute is to achieve its goals. We urge the MTC to raise the threshold to 30 days.