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To: Loretta King

Cc: Joe Huddleston; Shirley K. Sicilian; Gilmer, Brenda; Daw, C A; Walborn, Eugene; McHugh, Shona; Lee Baerlocher; Miller, Wood

Subject: Comments from Montana for Public Hearing on Model Mobile Workforce Withholding and Individual Income Tax Statutes

Importance: High

To: Shirley Sicilian, Hearing Officer

From: Dan Bucks, Director of Revenue, State of Montana

Re: Model Mobile Workforce Withholding and Individual Income Tax Statutes

These comments are submitted in regards to the proposed model statute section 1 with regard to individual income taxation. This section should be revised to reference the income threshold filing level in any state that has an income threshold for their individual income tax.

Alternatively, should the hearing officer wish to defer this matter for additional study, this section of the model statute could be returned to Multistate Tax Commission's Uniformity Committee for further consideration. Montana considers this section of the proposed model statute as now drafted to be unwise for these reasons:

1. The 20 day working presence test creates more complexity for the income tax administration of individual states that employ an income threshold for determining when a non-resident must file an income tax return. Instead of a simple income threshold test, the non-resident person and the taxing authority would need to apply a two-part test—the income test and the 20 working days in the state test to determine if the non-resident needs to file an income tax return. This double test would unnecessarily burden the tax administrative process. Further, there is no significant gain to the individual taxpayer in their initial decision to file a return for states that employ an income threshold. Most individuals know quite well their rate of pay and can determine whether or not they have exceeded the income filing thresholds of individual states in which they have worked. Further, states make the key features of their income tax systems, including filing thresholds, readily available to individuals on their web sites.
2. The dual test creates an inequity between residents and non-residents in the application of income taxes. Montana requires single individuals, residents and non-residents, to file individual income tax returns if they earn more than \$3,860 in income in Montana. A non-resident individual whose annual rate of pay is more than \$50,360 can exceed this threshold in 19 days or less. Thus, it will be possible for a material number of non-residents to earn more than \$3,860 in income in Montana, yet under that model statute be excused from filing a Montana return. This result is inequitable with regard to Montana residents who will earn less income, but still be required to file Montana individual income tax returns. We see no reason why non-residents should be granted special, favorable treatment as compared to residents in the application of any state individual income tax. If the model statute were to rely on the income filing thresholds of each state, this inequity favoring non-residents would not be created by the model statute.

1. The potential inequities created by the 20 day test may be even greater in cases where the non-resident person works for more than one employer, including related parties, in a given state. Manipulation can occur unless related employers are aggregated.
2. The 20 day presence test is inconsistent with the established position of the Multistate Tax Commission concerning filing thresholds for business activity taxes. The Commission has clearly recommended economic threshold measures as opposed to physical presences thresholds for business taxes. Given the rapid growth of pass-through entity businesses that link between individual income taxes and business income taxes, the inconsistency between these two very different approaches to filing becomes increasingly problematic. Further, if the Commission were to endorse a physical presence test for individual income taxes, it has the potential for undermining the credibility of the Commission with regard to its historic opposition to federal legislation imposing a physical presence test on states for the imposition of their business activity taxes. The Commission should be consistently supporting economic measures, instead of physical presence measures, with regard to the imposition of different forms of income taxation.