To limit the authority of States to tax certain income of employees for employment duties performed in other States.

IN THE HOUSE OF REPRESENTATIVES

April 27, 2009

Mr. Johnson of Georgia (for himself, Mr. Jordan of Ohio, Mr. Goodlatte, Mr. Butterfield, and Ms. Foxx) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To limit the authority of States to tax certain income of employees for employment duties performed in other States.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Mobile Workforce State Income Tax Fairness and Simplification Act”.

SEC. 2. LIMITATIONS ON STATE WITHHOLDING AND TAXATION OF EMPLOYEE INCOME.

(a) In General.—No part of the wages or other remuneration earned by an employee who performs employ-
ment duties in more than one State shall be subject to income tax in any State other than—

(1) the State of the employee’s residence; and

(2) the State within which the employee is present and performing employment duties for more than 30 days during the calendar year in which the income is earned.

(b) WAGES OR OTHER REMUNERATION.—Wages or other remuneration earned in any calendar year are not subject to State income tax withholding and reporting unless the employee is subject to income tax under subsection (a). Income tax withholding and reporting under subsection (a)(2) shall apply to wages or other remuneration earned as of the commencement date of duties in the State during the calendar year.

(e) OPERATING RULES.—For purposes of determining an employer’s State income tax withholding and information return obligations—

(1) an employer may rely on an employee’s determination of the time expected to be spent by such employee in the States in which the employee will perform duties absent—

(A) actual knowledge of fraud by the employee in making the estimate; or
collusion between the employer and the employee to evade tax;

(2) if records are maintained by an employer recording the location of an employee for other business purposes, such records shall not preclude an employer’s ability to rely on an employee’s determination as set forth in paragraph (1); and

(3) notwithstanding paragraph (2), if an employer, at its sole discretion, maintains a time and attendance system which tracks where the employee performs duties on a daily basis, data from the time and attendance system shall be used instead of the employee’s determination as set forth in paragraph (1).

(d) Definitions and Special Rules.—For purposes of this Act:

(1) Day.—

(A) An employee will be considered present and performing employment duties within a State for a day if the employee performs the preponderance of the employee’s employment duties within such State for such day.

(B) Notwithstanding subsection (d)(1)(A), if an employee performs material employment duties in a resident state and one nonresident
state during one day, such employee will be considered to have performed the preponderance of the employee’s employment duties in the non-resident state for such day.

(C) For purposes of subsection (d)(1), the portion of the day the employee is in transit shall not apply in determining the location of an employee’s performance of employment duties.

(2) EMPLOYEE.—The term “employee” shall be defined by the State in which the duties are performed, except that the term “employee” shall not include a professional athlete, professional entertainer, or certain public figures.

(3) PROFESSIONAL ATHLETE.—The term “professional athlete” means a person who performs services in a professional athletic event, provided that the wages or other remuneration are paid to such person for performing services in his or her capacity as a professional athlete.

(4) PROFESSIONAL ENTERTAINER.—The term “professional entertainer” means a person who performs services in the professional performing arts for wages or other remuneration on a per-event basis, provided that the wages or other remuneration
are paid to such person for performing services in
his or her capacity as a professional entertainer.

(5) CERTAIN PUBLIC FIGURES.—The term
“certain public figures” means persons of promi-
nence who perform services for wages or other remu-
neration on a per-event basis, provided that the
wages or other remuneration are paid to such person
for services provided at a discrete event in the form
of a speech, similar presentation or personal appear-
ance.

(6) EMPLOYER.—The term “employer” has the
meaning given such term in section 3401(d) of the
Internal Revenue Code of 1986 (26 U.S.C. 3401(d))
or shall be defined by the State in which the duties
are performed.

(7) STATE.—The term “State” means each of
the several States of the United States.

(8) TIME AND ATTENDANCE SYSTEM.—The
term “time and attendance system” means a system
where the employee is required on a contemporar-
ey basis to record his work location for every day
worked outside of the state in which the employee’s
duties are primarily performed and the employer
uses this data to allocate the employee’s wages be-
between all taxing jurisdictions in which the employee performs duties.

(9) **WAGES OR OTHER REMUNERATION.**—The term “wages or other remuneration” shall be defined by the State in which the employment duties are performed.

**SEC. 3. EFFECTIVE DATE.**

This Act shall be effective on January 1, 2011.