American Payroll Association
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Statement for the Record Submitted to the
House Judiciary Subcommittee on Regulatory Reform, Commercial and Antitrust Law
In support of HR 2315, the Mobile Workforce State Income Tax Simplification Act of 2015

The Honorable Tom Marino, Chairman
The Honorable Hank Johnson, ranking member
Subcommittee on Regulatory Reform, Commercial and Antitrust Law
Committee on the Judiciary
United States House of Representatives
2138 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Marino and Ranking Member Johnson,

The American Payroll Association thanks you for the opportunity to submit this statement for the record for the June 2, 2015, hearing on HR 2315, the *Mobile Workforce State Income Tax Simplification Act of 2015*. APA enthusiastically supports the bill and encourages you to move it swiftly through the subcommittee.

APA is a nonprofit professional association with more than 20,000 members. Most of our members process the payroll for their employers, while some of our members work for payroll service providers who in turn process the payrolls of another 1.5 million employers, amounting to one-third of the entire private-sector workforce. Payroll professionals are the people responsible for the administrative task of properly withholding and remitting state and federal taxes. Simply put, no one is more familiar with the responsibility and difficulty relating to withholding nonresident taxes from employees' pay.

In addition, APA itself is a small employer with 85 employees in 13 states. APA employees travel regularly throughout the country providing educational services to payroll professionals.

Often when employees cross state borders for work, the administrative burdens on employers and employees increase exponentially. For this reason, HR 2315 is very important to both business and workers. This is an issue that cuts across all demographics, from large to small employers, public and private sector, union and nonunion, nonprofit and for-profit, and all others.

Inconsistent taxation of individuals who reside in one state but work in another

When an employee resides in one state and works throughout the year in another, state and local tax withholding and reporting can be very complicated. The employer must verify the employee's state of residence, check whether the two states have a reciprocity agreement, analyze the tax laws of both states, likely withhold tax for both states, and prepare a Form W-2 for both states.

Taxation may be imposed by the state where the work is performed. 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 must be exceeded before withholding is required. The thresholds differ widely, including various numbers of days worked within the state and various wage amounts earned.

Taxation may also be imposed by the state where the worker resides. Just as the United States taxes its citizens and residents on their worldwide income, 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. Further complicating matters, each state has its own wage reporting requirements.

Burdens on employers caused by temporary out-of-state work assignments

Determining whether nexus has been established is very complicated and variable. Businesses may take a common-sense approach to the matter, believing that they have nexus only in those states in which they have established a physical presence or regularly provide services. Contrary to common sense, a recent study conducted by Bloomberg BNA found that seven states consider a business to have established nexus in their jurisdiction when an individual enters their state to attend a one-day seminar.[1]

It is the duty of payroll professionals to ensure that taxes are withheld properly for the state in which the employee is working as well as the state in which the employee claims residency. It is confounding that there is no consistent guidance on what to do when an employee crosses a border for work. Each state has its own set of tax laws and regulations applicable to nonresident workers. States do not impose these regulations in the same manner, and each pairing of states creates a new requirement.

[1] *State Nexus Policies and Payroll: Navigating Taxation of Mobile Workers*, Bloomberg BNA, April 2015.

For example, the tax obligations for a Michigan resident working temporarily in New York are completely different than they are for the same employee working in other states, say California or Georgia. And if a Pennsylvania resident were to work in New York, California, or Georgia, the results would be different than they would be for the Michigan resident.

Often employers send workers to a new state or locality at a moment's notice, numerous times a year. This work is generally temporary in nature and is constantly changing in terms of where, when, and for how long an employee is assigned. Payroll professionals might begin withholding and accumulating tax for a new jurisdiction before they have even registered the business. Sometimes the tax has to be deposited with the jurisdiction under a status of "account applied for," which requires a reconciliation of wages and taxes once the withholding account has been established. The registration process for businesses can be just as burdensome as managing the tax itself.

This process is very time consuming, and therefore costly, and utilizes much of a payroll department staff's resources for a small number of employees. In order to ensure timely deposits and filings for all of these states due to the temporary work situations, many employers outsource their tax filing to a payroll service provider. Even so, the employer retains the burden of tracking the employees' work locations and time spent in each one. This is often a manual process. Of course, outsourcing the tax filing increases the cost of compliance.

After the systemic hurdles are overcome, the payroll department deals with questions and protestations from employees who see a new state's tax withheld from their paychecks. Payroll departments are generally unable to provide tax advice to employees, so they are often in an untenable position of notifying employees of a requirement to file an out-of-state tax return without being able to offer any guidance on how to do so.

Occasionally, to appease or compensate employees who have taxes withheld for multiple states, an employer will provide or pay for an employee's tax preparation services. Since tax preparation assistance is a taxable benefit, the employer must add its value to the employees' wages. To save the employees from an additional tax burden, an employer might 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.

Nonresident taxation during out-of-state work assignments burdens employees

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 2315, 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. A resident's overall tax burden in the nine states that do not impose an income tax (e.g., Texas, Washington) is comparable to that of other states. When residents of those states work in a state with an income tax, they are effectively subject to double taxation.

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 does not allow a credit for the taxes paid to the work state. When the employee files a personal income tax return with the resident state, a credit will be allowed for the taxes paid to the work state; 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. The cost to prepare such tax filings increases with the number of states and complexity involved.

Quite often, an employee who spends a short amount of time in another state will 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 to get a refund of all that was withheld.

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. This requires a great deal of time, effort, and burden with no positive return for the employer, the employee, or the state.

HR 2315 promotes increased compliance through decreased burden

The Mobile Workforce Bill provides a 30-day safe harbor for employees and employers. When an employee travels into another state, he or she will not be subject to nonresident taxes for time periods of less than 30 days. The 30-day threshold is not continuous, so an employee might make a number of business trips to a state before tripping it. Once the threshold is tripped, the tax and withholding obligation reaches back to the first day worked in the state.

Due to the extreme complexity of the varying state tax regulations, many companies find complying with the laws nearly impossible. A lack of adequate software systems, personnel, time, money, or other resources are some of the impediments that prevent compliance with the complex laws. Still other companies are simply ignorant of the current legal framework and would be shocked to discover their own lack of compliance.

More employers will be able to comply with a law that is uniform across all states and localities and that is federally supported, versus the current patchwork of laws of which an employer might not even be aware.

It is worth noting that early versions of this bill, introduced in previous sessions of Congress, called for a 60-day safe harbor with no retroactivity. The current language has been negotiated in good faith to recognize the financial impact on states while also providing the necessary relief for businesses and workers.

The American Payroll Association and its 20,000 members urge Congress to consider and enact this legislation so that the burden and cost of administering multistate taxes can be reduced for American workers and American businesses. HR 2315 ensures fair and consistent handling of this multistate taxation issue across the nation.

Sincerely,

William Dunn, CPP
Director of Government Relations
American Payroll Association