

116TH CONGRESS
2D SESSION

S. 3995

To limit the authority of States or other taxing jurisdictions to tax certain income of employees for employment duties performed in other States or taxing jurisdictions, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JUNE 18, 2020

Mr. THUNE (for himself and Mr. BROWN) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To limit the authority of States or other taxing jurisdictions to tax certain income of employees for employment duties performed in other States or taxing jurisdictions, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Remote and Mobile
5 Worker Relief Act of 2020”.

1 **SEC. 2. LIMITATIONS ON WITHHOLDING AND TAXATION OF**
2 **EMPLOYEE INCOME.**

3 (a) IN GENERAL.—No part of the wages or other re-
4 muneration earned by an employee who performs employ-
5 ment duties in more than one taxing jurisdiction shall be
6 subject to income tax in any taxing jurisdiction other
7 than—

8 (1) the taxing jurisdiction of the employee’s res-
9 idence; and

10 (2) the taxing jurisdiction within which the em-
11 ployee is present and performing employment duties
12 for more than 30 days during the calendar year in
13 which the wages or other remuneration is earned.

14 (b) WAGES OR OTHER REMUNERATION.—Wages or
15 other remuneration earned in any calendar year shall not
16 be subject to income tax withholding and reporting re-
17 quirements with respect to any taxing jurisdiction unless
18 the employee is subject to income tax in such taxing juris-
19 diction under subsection (a). Income tax withholding and
20 reporting requirements under subsection (a)(2) shall apply
21 to wages or other remuneration earned as of the com-
22 mencement date of employment duties in the taxing juris-
23 diction during the calendar year.

24 (c) OPERATING RULES.—For purposes of deter-
25 mining penalties related to an employer’s income tax with-

1 holding and reporting requirements with respect to any
2 taxing jurisdiction—

3 (1) an employer may rely on an employee's an-
4 nual determination of the time expected to be spent
5 by such employee in the taxing jurisdictions in which
6 the employee will perform duties absent—

7 (A) the employer's actual knowledge of
8 fraud by the employee in making the determina-
9 tion; or

10 (B) collusion between the employer and the
11 employee to evade tax;

12 (2) except as provided in paragraph (3), if
13 records are maintained by an employer in the reg-
14 ular course of business that record the location of an
15 employee, such records shall not preclude an employ-
16 er's ability to rely on an employee's determination
17 under paragraph (1); and

18 (3) notwithstanding paragraph (2), if an em-
19 ployer, at its sole discretion, maintains a time and
20 attendance system that tracks where the employee
21 performs duties on a daily basis, data from the time
22 and attendance system shall be used instead of the
23 employee's determination under paragraph (1).

24 (d) DEFINITIONS AND SPECIAL RULES.—For pur-
25 poses of this Act:

1 (1) DAY.—

2 (A) Except as provided in subparagraph
3 (B), an employee is considered present and per-
4 forming employment duties within a taxing ju-
5 risdiction for a day if the employee performs
6 more of the employee's employment duties with-
7 in such taxing jurisdiction than in any other
8 taxing jurisdiction during a day.

9 (B) If an employee performs employment
10 duties in a resident taxing jurisdiction and in
11 only one nonresident taxing jurisdiction during
12 one day, such employee shall be considered to
13 have performed more of the employee's employ-
14 ment duties in the nonresident taxing jurisdic-
15 tion than in the resident taxing jurisdiction for
16 such day.

17 (C) For purposes of this paragraph, the
18 portion of the day during which the employee is
19 in transit shall not be considered in determining
20 the location of an employee's performance of
21 employment duties.

22 (2) EMPLOYEE.—The term “employee” has the
23 same meaning given to it by the taxing jurisdiction
24 in which the employment duties are performed, ex-
25 cept that the term “employee” shall not include a

1 professional athlete, professional entertainer, quali-
2 fied production employee, or certain public figures.

3 (3) PROFESSIONAL ATHLETE.—The term “pro-
4 fessional athlete” means a person who performs
5 services in a professional athletic event, provided
6 that the wages or other remuneration are paid to
7 such person for performing services in his or her ca-
8 pacity as a professional athlete.

9 (4) PROFESSIONAL ENTERTAINER.—The term
10 “professional entertainer” means a person of promi-
11 nence who performs services in the professional per-
12 forming arts for wages or other remuneration on a
13 per-event basis, provided that the wages or other re-
14 muneration are paid to such person for performing
15 services in his or her capacity as a professional en-
16 tertainer.

17 (5) QUALIFIED PRODUCTION EMPLOYEE.—The
18 term “qualified production employee” means a per-
19 son who performs production services of any nature
20 directly in connection with a taxing jurisdiction
21 qualified, certified or approved film, television or
22 other commercial video production for wages or
23 other remuneration, provided that the wages or
24 other remuneration paid to such person are qualified
25 production costs or expenditures under such taxing

1 jurisdiction’s qualified, certified or approved film in-
 2 centive program, and that such wages or other re-
 3 muneratation must be subject to withholding under
 4 such film incentive program as a condition to treat-
 5 ing such wages or other remuneration as a qualified
 6 production cost or expenditure.

7 (6) CERTAIN PUBLIC FIGURES.—The term
 8 “certain public figures” means persons of promi-
 9 nence who perform services for wages or other remu-
 10 neration on a per-event basis, provided that the
 11 wages or other remuneration are paid to such person
 12 for services provided at a discrete event, in the na-
 13 ture of a speech, public appearance, or similar event.

14 (7) EMPLOYER.—The term “employer” has the
 15 meaning given such term in section 3401(d) of the
 16 Internal Revenue Code of 1986 (26 U.S.C. 3401(d)),
 17 unless such term is defined by the taxing jurisdiction
 18 in which the employee’s employment duties are per-
 19 formed, in which case the taxing jurisdiction’s defi-
 20 nition shall prevail.

21 (8) TAXING JURISDICTION.—The term “taxing
 22 jurisdiction” means any of the several States, the
 23 District of Columbia, or any territory or possession
 24 of the United States, any municipality, city, county,
 25 township, parish, transportation district, or assess-

1 ment jurisdiction, or any other political subdivision
 2 within the territorial limits of the United States with
 3 the authority to impose a tax, charge, or fee.

4 (9) TIME AND ATTENDANCE SYSTEM.—The
 5 term “time and attendance system” means a system
 6 in which—

7 (A) the employee is required on a contem-
 8 poraneous basis to record his work location for
 9 every day worked outside of the taxing jurisdic-
 10 tion in which the employee’s employment duties
 11 are primarily performed; and

12 (B) the system is designed to allow the em-
 13 ployer to allocate the employee’s wages for in-
 14 come tax purposes among all taxing jurisdic-
 15 tions in which the employee performs employ-
 16 ment duties for such employer.

17 (10) WAGES OR OTHER REMUNERATION.—The
 18 term “wages or other remuneration” may be limited
 19 by the taxing jurisdiction in which the employment
 20 duties are performed.

21 (e) ADJUSTMENT DURING CORONAVIRUS PAN-
 22 DEMIC.—With respect to calendar year 2020, in the case
 23 of any employee who performs employment duties in any
 24 taxing jurisdiction other than the taxing jurisdiction of the
 25 employee’s residence during such year as a result of the

1 COVID–19 public health emergency, subsection (a)(2)
 2 shall be applied by substituting “90 days” for “30 days”.

3 **SEC. 3. STATE AND LOCAL TAX CERTAINTY.**

4 (a) STATUS OF EMPLOYEES DURING COVERED PE-
 5 RIOD.—Notwithstanding section 2(a)(2) or any provision
 6 of law of a taxing jurisdiction, with respect to any em-
 7 ployee who is working remotely within such taxing juris-
 8 diction during the covered period—

9 (1) except as provided under paragraph (2),
 10 any wages earned by such employee during such pe-
 11 riod shall be deemed to have been earned at the pri-
 12 mary work location of such employee; and

13 (2) if an employer, at its sole discretion, main-
 14 tains a system that tracks where such employee per-
 15 forms duties on a daily basis, wages earned by such
 16 employee may, at the election of such employer, be
 17 treated as earned at the location in which such du-
 18 ties were remotely performed.

19 (b) STATUS OF BUSINESSES DURING COVERED PE-
 20 RIOD.—Notwithstanding any provision of law of a taxing
 21 jurisdiction—

22 (1) in the case of an out-of-state business which
 23 has any employees working remotely within such ju-
 24 risdiction during the covered period, the duties per-
 25 formed by such employees within such jurisdiction

1 during such period shall not be sufficient to create
 2 any nexus or establish any minimum contacts or
 3 level of presence that would otherwise subject such
 4 business to any registration, taxation, or other re-
 5 lated requirements for businesses operating within
 6 such jurisdiction; and

7 (2) except as provided under subsection (a)(2),
 8 with respect to any tax imposed by such taxing ju-
 9 risdiction which is determined, in whole or in part,
 10 based on net or gross receipts or income, for pur-
 11 poses of apportioning or sourcing such receipts or
 12 income, any duties performed by an employee of an
 13 out-of-state business while working remotely during
 14 the covered period—

15 (A) shall be disregarded with respect to
 16 any filing requirements for such tax; and

17 (B) shall be apportioned and sourced to
 18 the tax jurisdiction which includes the primary
 19 work location of such employee.

20 (c) DEFINITIONS.—For purposes of this section—

21 (1) COVERED PERIOD.—The term “covered pe-
 22 riod” means, with respect to any employee working
 23 remotely, the period—

24 (A) beginning on the date on which such
 25 employee began working remotely; and

1 (B) ending on the earlier of—

2 (i) the date on which the employer al-
3 lows, at the same time—

4 (I) such employee to return to
5 their primary work location; and

6 (II) not less than 90 percent of
7 their permanent workforce to return
8 to such work location; or

9 (ii) December 31, 2020.

10 (2) EMPLOYEE.—The term “employee” has the
11 same meaning given to it by the taxing jurisdiction
12 in which the employment duties are performed.

13 (3) EMPLOYER.—The term “employer” has the
14 same meaning given such term under section
15 2(d)(7).

16 (4) OUT-OF-STATE BUSINESS.—The term “out-
17 of-state business” means, with respect to any tax ju-
18 risdiction, any business entity which, excepting any
19 employees of such business who are working re-
20 motely within such jurisdiction during the covered
21 period, would not otherwise be subject to any tax fil-
22 ing requirements under the existing law of such tax-
23 ing jurisdiction.

24 (5) PRIMARY WORK LOCATION.—The term “pri-
25 mary work location” means, with respect to an em-

1 employee, the address of the employer where the em-
2 ployee is regularly assigned to work when such em-
3 ployee is not working remotely during the covered
4 period.

5 (6) TAXING JURISDICTION.—The term “taxing
6 jurisdiction” has the same meaning given such term
7 under section 2(d)(8).

8 (7) WAGES.—The term “wages” means all
9 wages and other remuneration paid to an employee
10 that are subject to tax or withholding requirements
11 under the law of the taxing jurisdiction in which the
12 employment duties are deemed to be performed
13 under subsection (a) during the covered period.

14 (8) WORKING REMOTELY.—The term “working
15 remotely” means the performance of duties by an
16 employee at a location other than the primary work
17 location of such employee at the direction of their
18 employer due to conditions resulting from the public
19 health emergency relating to the virus SARS-CoV-
20 2 or coronavirus disease 2019 (referred to in this
21 paragraph as “COVID-19”), including—

22 (A) to comply with any government order
23 relating to COVID-19;

24 (B) to prevent the spread of COVID-19;

25 and

1 (C) due to the employee or a member of
2 the employee's family contracting COVID-19.

3 (d) PRESERVATION OF AUTHORITY OF TAXING JU-
4 RISDICTIONS.—This section shall not be construed as
5 modifying, impairing, superseding, or authorizing the
6 modification, impairment, or supersession of the law of
7 any taxing jurisdiction pertaining to taxation except as ex-
8 pressly provided in subsections (a) through (c).

9 **SEC. 4. EFFECTIVE DATE; APPLICABILITY.**

10 (a) EFFECTIVE DATE.—This Act shall apply to cal-
11 endar years beginning after December 31, 2019.

12 (b) APPLICABILITY.—This Act shall not apply to any
13 tax obligation that accrues before January 1, 2020.

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