

## House Subcommittee Hears Testimony on Mobile Workforce Act (Pending H.R. 1129)

May 14, 2014

### Overview

On April 29, 2014, the U.S. House of Representatives Judiciary Subcommittee on Regulatory Reform, Commercial and Antitrust Law (the “Subcommittee”) held a hearing (the “Hearing”) on the Mobile Workforce State Income Tax Simplification Act of 2013 (H.R. 1129, or the “Bill”). During the Hearing, the Subcommittee heard testimony from four witnesses, three in support of the Bill and one in opposition. As Full Committee Chairman Goodlatte stated in his opening remarks, if adopted into law, the Bill “creates a bright-line thirty-day threshold to determine nonresident income tax liability . . . [and] ensures that employees will have a clear understanding of when they are liable for nonresident state income taxes, and employers will be able to accurately withhold these taxes.”

In this Alert, we summarize H.R. 1129, the testimony of the witnesses at the Hearing, and the outlook for this legislation in this 113<sup>th</sup> session of Congress.

### H.R. 1129<sup>1</sup>

H.R. 1129 was introduced in the House of Representatives on March 13, 2013, by Howard Coble (R-NC) and Hank Johnson (D-GA). An identical Senate version (S. 1645) was introduced by Sherrod Brown (D-OH) and John Thune (R-SD) on November 5, 2013. Both versions are currently in committee and no votes have been scheduled.

If enacted, the Bill would limit state taxation of wages or other remuneration of any employee who performs duties in more than one state to: (1) the state of the employee's residence; and (2) the state(s) in which the employee is “present and performing employment duties for more than thirty days during the calendar year in which the wages or remuneration is earned.” The Bill applies these same standards to an employer's withholding and reporting requirements.

In general, under the Bill an employer may rely on an employee's determination of the time he or she will spend in each state during the year. This would apply unless the employer maintains a “time and attendance system” that records and tracks where employees perform their daily duties, in which case this “time and attendance system” would be used to determine the number of days an employee works in each state.

The Bill generally defines “employee” according to the definition used in the applicable state where the employee performs his or her duties. However, professional athletes, entertainers, and certain public figures would be exempt from the definition of “employee.” The Bill states that an employee is deemed to work a “day” in the state where he or she performs the most duties for the day, not including travel time. However, if an employee performs duties in his or her resident state and only one nonresident state during the day, the employee would be considered to perform more employment duties in the nonresident state for that day.

### The Hearing

Witnesses that attended the Hearing included three individuals representing organizations in support of the Bill, including:

- (1) the Council on State Taxation,
- (2) the American Institute of Certified Public Accountants, and
- (3) the American Payroll Association.

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<sup>1</sup> H.R. 1129 may be accessed online at the Library of Congress website at: <http://hdl.loc.gov/loc.uscongress/legislation.113hr1129>.

A fourth individual testified in opposition on behalf of the Federation of Tax Administrators (an association of the tax and revenue agencies in each of the 50 states, the District of Columbia, New York City, and the City of Philadelphia).<sup>2</sup>

Subcommittee Chairman Bachus, Full Committee Chairman Goodlatte, and H.R. 1129 co-sponsor Johnson spoke in support of the proposed law in their opening remarks. However, certain other Representatives questioned the witnesses on the appropriateness of certain provisions (e.g., the definition of a “day” or whether 30 days is the appropriate threshold) as well as the impact on state sovereignty and overall fairness.

### Legislative Outlook

Full Committee Chairman Goodlatte did not provide any indication regarding next steps. Also, he did not lay out a plan for the full committee to take up the Bill or indicate that it would be placed on the House legislative calendar for floor consideration. Next steps are also unclear regarding the identical bill that is before the Senate.

### Considerations

In light of ongoing state audit activity, taxpayers should consider whether their current employment tax reporting, withholding, and compliance processes are up-to-date as well as whether they are prepared for the possibility of federal legislation in this area.

### Contacts

For questions regarding this Alert, the Hearing, H.R. 1129, or other proposed federal legislation that may impact state taxation, please reach out to the applicable Deloitte Tax LLP professionals below.

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<sup>2</sup> The written statements of the witnesses may be accessed online at: <http://judiciary.house.gov/index.cfm/2014/4/hearing-h-r-1129-the-mobile-workforce-state-income-tax-simplification-act-of-2013>.