

House Judiciary Committee sets the stage for a floor vote on state tax bills

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Overview

The US House of Representatives (House) Judiciary Committee recently voted to approve three federal bills concerning state taxes: the Mobile Workforce State Income Tax Simplification Act of 2015 (HR 2315), the Business Activity Tax Simplification Act of 2015 (HR 2584), and the Digital Goods and Services Tax Fairness Act of 2015 (HR 1643) (referred to herein collectively as the Bills). The House Judiciary Committee's approval paves the way for a potential floor vote on the Bills in the House, which could lead to a federally imposed standard in the following areas:

- Nonresident employee withholding taxes, pursuant to HR 2315
- State and local income tax nexus, pursuant to HR 2584
- Sales and use tax consequences of sales of digital goods and digital services, pursuant to HR 1643

In this Tax Alert we summarize this pending legislation and provide some taxpayer considerations.

Mobile Workforce State Income Tax Simplification Act of 2015¹

HR 2315 would impose a federal standard regarding when a state may: (1) tax nonresident employees who travel to that state to perform work; and (2) require employers to implement state income tax withholding and reporting with respect to wages or other remuneration earned by such employees. If enacted, HR 2315 would limit state taxation of wages or other remuneration of any employee who performs duties in more than one state to:

- The state of the employee's residence; and
- 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."

These same standards would apply to an employer's state income tax withholding and reporting requirements.

For purposes of determining the application of employer penalties related to a state's withholding and reporting requirements, the legislation provides that in the absence of certain instances of fraud or collusion, an employer may generally rely on an employee's determination of the time he or she will spend in each state during the year. This determination would apply unless the employer maintains a "time and attendance system" that records and tracks where employees perform their daily duties—in which case, such system would be used to determine the number of days an employee works in each state.

Business Activity Tax Simplification Act of 2015²

HR 2584 would prohibit the imposition of state income or other business activity taxes (does not include sales, use, or other similar types of transaction-based taxes) on an out-of-state entity, unless such entity has a physical presence in the taxing state. The proposed law would also "modernize" Public Law 86-272—which currently applies only to sales of tangible personal property³—by expanding the protections to sales of other forms of property and services, and to other transactions.

Under HR 2584, a taxpayer would generally be considered to have a physical presence in a taxing jurisdiction if that taxpayer: (1) is "an individual physically in the state," or has employees in the state; (2) uses the services of an agent to establish and maintain a market in the state; or (3) leases or owns tangible personal property (does not include leasing or licensing of computer software) or real property in the state. However, under the proposed law, a

¹ The Mobile Workforce State Income Tax Simplification Act may be accessed [here](#). **S 386**, an identical companion measure, was introduced in the Senate in February by Finance Committee member John Thune, R-S.D.

² The Business Activity Simplification Act may be accessed [here](#).

³ 15 U.S.C. § 381.

taxpayer would not be considered to have a physical presence in instances where the taxpayer's presence in the taxing jurisdiction does not exceed 14 days—unless an increased day threshold is provided by state law—or if such presence entails only limited or transient business activities.

Digital Goods and Services Tax Fairness Act of 2015⁴

HR 1643 is directed at limiting the imposition of multiple or discriminatory taxes on the sale or use of digital goods or digital services. If enacted, HR 1643 would require states to provide consistent sales and use tax treatment with respect to sales of digital goods or digital services, and sales of similar property, goods, or services accomplished through other means. HR 1643 would also generally source the sales of digital goods or digital services to the jurisdiction where the customer's "tax address" is located.

Legislative outlook

Next steps are uncertain at this time, as House leaders have not yet identified when the Bills will come up for a floor vote.

Considerations

Since passage of the Bills would substantially alter traditional notions of state and local income taxation, as well as sales and use taxation, taxpayers may wish to consider evaluating their preparedness pending the potential enactment of federal law in these areas. Taxpayers' considerations may include:

- The review of their current employment tax reporting, withholding, and compliance processes, and how applicable requirements would change if HR 2315 is enacted.
- The reevaluation of their income tax nexus footprint to determine whether they are registered and reporting in appropriate jurisdictions as required under current law, and how that might change if HR 2584 is enacted.
- The review of the taxability of digital goods and services to ascertain whether sales tax is collected or use tax is accrued properly under current law, and how that might change if HR 1643 is enacted.

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⁴ The Digital Goods and Services Tax Fairness Act of 2015 may be accessed [here](#). **S 851**, a related companion measure, was introduced in the Senate in March by Finance Committee member John Thune, R-S.D.