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Legislative Update: House passes mobile workforce bill; state taxation of cross-border workers

The U.S. House of Representatives on September 21 passed by voice vote H.R. 2315, the "Mobile Workforce State Income Tax Simplification Act of 2015."

A companion bill, S. 386, is pending in the Senate.

Under, H.R. 2315 an employee would not be subject to payment of individual (personal) income taxes in a state, and an employer would not be required to withhold on wages and other remuneration earned in a state unless the employee: (1) is a resident of the state; or (2) has been present and performing employment duties in the state for more than 30 days during the calendar year. Once an employee exceeds the 30-day threshold, income tax withholding would apply to income earned as of the date the employee commenced performing duties in the state.

The bill also would allow an employer, for purposes of determining penalties related to employer withholding or reporting requirements, to rely on an employee's annual determination of the time that the employee would spend working in a state, in the absence of fraud or collusion by such employee. However, if the employer has a time and attendance system that tracks an employee's whereabouts, data from that system would have to be used in lieu of the employee's determination.

H.R. 2315 clarifies that being "present in a state for a day" means that the employee performs a preponderance of his or her duties in that state during such day. If an employee performs employment duties in the resident state and one nonresident state during the same day, the duties would be considered performed in the nonresident state. The term "employee" is defined under the laws of the state where the services were performed; however, certain persons, such as professional athletes, entertainers and public figures, would be specifically excluded from the definition of employee.

If it becomes law, the Mobile Workforce Act would be effective on January 1 of the second year that begins after enactment.

KPMG observation

Similar legislation has been introduced in previous sessions of Congress and would aim to resolve the lack of uniformity among states with respect to when an employer's obligation to withhold on mobile workers commences, or when a nonresident employee's presence in state to perform duties triggers an individual income tax filing requirement.

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