



## Lawmakers make another attempt to ease state nonresident income tax burden

After failing yet again to pass both the House and Senate in the 114<sup>th</sup> Congress, Senator John Thune (R-South Dakota) has introduced, along with 7 cosponsors, [S. 386, Mobile Workforce State Income Tax Simplification Act of 2015](#), to ease the nonresident income tax burden on businesses and taxpayers.

### Background

Similar to [H.R. 1129](#) introduced last year, states would be prohibited from imposing a nonresident income tax on the wages earned by employees working in more than one state provided employees are present and performing services in the nonresident state for 30 or fewer days in the calendar year.

For applicable nonresident employees, employers would be relieved of withholding nonresident income tax and meeting any related information reporting requirements. Additionally, employers would not be subject to withholding or reporting penalties if they rely on an employee's annual determination of time to be spent working in the nonresident state (assuming there is no fraud or collusion).

### Simplification isn't that simple

[Senator Sherrod Brown](#) (D-Ohio), a cosponsor of S.386, pointed out in a [press release](#) earlier this year that setting a uniform exemption on state resident income tax is fairer to residents of states without an income tax. Ohio already exempts nonresidents from personal income tax if they are employed less than 21 days in the state. (*Ohio information release, PIT 2014-01*)

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### Ernst & Young LLP insights

Businesses with employees working in more than one state need to continue to be vigilant in meeting their nonresident income tax withholding and information reporting requirements, keeping in mind that currently only 23 states waive their nonresident income tax requirements based on de minimis earnings and/or time spent in the state.

Enforcement of employers' withholding and reporting obligations continues to be aggressive in some states.

New Jersey for instance recently reported recovery of back taxes in excess of \$1.2 million through audits in cooperation with the Department of Revenue, local and state law enforcement officials and U.S. Customs. (*EY Payroll NewsFlash, Vol. 15, 161, August 20, 2014*)

Ironically, travel by employees from states that don't impose a personal income tax (e.g., Texas) into those states that do (e.g., California and New York), is one of the reasons why federal preemptive legislation has struggled for enactment.

For some time now, New York has significantly invested in electronic income tax withholding audit techniques that target executives and other short-term business travelers who fail to report their nonresident income.

Noncompliance is presumed to be more likely from taxpayers who aren't accustomed to filing state individual income tax returns and businesses not in the practice of withholding income tax from wages.

As lawmakers prepare for election year 2016, it is unlikely they will invest much political capital in a measure that lacks support from some of the most populated states.

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