

Prepared Statement of the American Institute of Certified Public Accountants

MOBILE WORKFORCE STATE INCOME TAX
FAIRNESS AND SIMPLIFICATION ACT OF 2007

THURSDAY, NOVEMBER 1, 2007

The American Institute of Certified Public Accountants (AICPA) appreciates the opportunity to submit this statement for the record to the Committee on the Judiciary, Subcommittee on Commercial and Administrative Law for the hearing on H.R. 3359, the Mobile Workforce State Income Tax Fairness and Simplification Act of 2007.

The AICPA is the national, professional association of CPAs, with more than 350,000 members, including CPAs in business and industry, public practice, government, and education; student affiliates; and international associates. It sets ethical standards for the profession and U.S. auditing standards for audits of private companies; federal, state and local governments; and non-profit organizations. It also develops and grades the Uniform CPA Examination.

Approximately 42% of our membership is made up of members in public practice. Of our members in public practice, approximately 75% are in firms of 10 people or less. This numbers 46,500 firms.

The AICPA supports H.R. 3359, the Mobile Workforce State Income Tax Fairness Act of 2007. Businesses, including small businesses and family businesses that operate interstate, are subject to a significant regulatory burden with regard to compliance with nonresident state income tax withholding laws. These burdens translate into an administrative burden on these entities that takes resources from operating their business. Also, the cost must be passed on to the entity's customers and clients. Having a uniform national standard for state nonresident income tax withholding would significantly ameliorate these burdens. And concomitant with this is the need for a de minimis exemption from the multi-state assessment of state nonresident income tax.

Accounting firms, including small firms, do a great deal of business across state lines. Many clients have facilities in nearby states that require an on-site inspection during the conduct of an audit. Additionally, consulting, tax or other non audit services that CPAs deliver may be provided to clients in other states, or to facilities of local clients that are located in other states. Many small business clients of CPAs also have multi-state activities. All of these small businesses, accounting firms and their clients are affected by nonresident income tax withholding laws.

There are 41 states that impose a personal income tax on wages and partnership income, and there are many differing tax requirements regarding the withholding for income tax of nonresidents among those 41 states. A number of states have a de minimis threshold, or exemption for nonresidents working in the state before taxes must be withheld and paid. Others have a de minimis exemption based on the amount of the wages earned, either in dollars or as a percent of total income, while in the state. The rest of the states that impose personal income taxes on nonresident income earned in the state require only a work appearance in the state. Further complicating the issue is that a number of these states have reciprocity agreements with other, usually adjoining,

states that specify that they will not require state income tax withholding for residents of the other states that have signed the reciprocity pact.

It is not difficult to understand that the recordkeeping, especially if business travel to multiple states occurs, can be voluminous. And the recordkeeping and withholding a state requires can be for as little as one day's work in another state. Additionally, the amount of research that goes into determining what each state law requires is expensive and time consuming, especially for a small firm or small business that does not have a great amount of resources. A small firm or business will often be required to engage outside counsel to research the laws of the other states. And this research needs to be updated yearly to make sure that the state law has not changed. Having a uniform national standard would eliminate the burden of having to research state law for each state where work is performed.

In addition to uniformity, there needs to be a de minimis exemption. AICPA believes that the 60 day limit contained in H.R. 3359 is fair and workable. The economic changes that have occurred as our country has gone from local economies to a national economy are huge.

Where businesses once tended to be local, they now have a national reach. This has caused the operations of even small businesses to move to an interstate basis. Because of the interstate operations of these companies, many providers of services to these companies, such as CPAs, find that they are also operating, to some extent, on an interstate basis. And with the ease of communication through the internet, and the ease of travel, the ability to provide some services far from home is not an issue, as it once was. What once were local taxation issues have now become national in scope, and burdens must be eased in order to promote this interstate commerce and insure it runs efficiently.

Many smaller firms and businesses use third party payroll services instead of performing that function in house. A number of third party payroll service providers are unable to handle multi-state reporting. They often limit, for example, reporting to two states, the state of residence and the state of employment. Additionally, third party payroll service providers generally report on a pay period basis (e.g., twice per month, bi-weekly, etc.) as opposed to daily, which can be a necessity when interstate work is performed. These reporting issues require employers to track and manually adjust the reporting and withholding to comply with various state requirements. The alternative is to pay for a much more expensive payroll service. H.R. 3359 would provide significant relief from these burdens.

The 60 day limit in the bill ensures that the interstate work for which an exemption from withholding is granted does not become a means of avoiding being taxed or shifting income tax liability to a state with a lower rate. Instead, it insures that the primary place(s) of business for an employee are where that employee pays state income taxes.

There is one amendment to the bill that the AICPA would recommend. Once the 60 day threshold is reached, the employee should pay withholding and state income taxes in the host state for all wages earned going forward. The withholding should not be made retroactive for the first 60 days. To do so would be unfair to the employee. If the reach is retroactive, then on the 61st day of working in the other state, the employee would owe withholding to that state for the 60 day period.

This could be a substantial amount, which could even cause the employee to immediately be in an underpayment penalty situation. It would be unfair to require the employee to pay this much money, especially where the employee is a resident of one of the other 40 states that imposes a state income tax. In that situation, the employee would have double paid withholding and would not receive a refund from the home state until tax returns are filed and refunds paid. Even should a state allow for current withholding and filing in the open payroll period, this could cause cash flow challenges for employees should they find themselves in a high tax rate jurisdiction.

The AICPA appreciates the opportunity to submit this statement in support of H.R. 3359.