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COUNCIL ON STATE TAXATION

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March 22, 2023

Senator Ann H. Rest, Chair
Senator Matt D. Klein, Vice Chair
Senator Bill Weber, Ranking Minority Member
Minnesota State Senate, Taxes Committee

Re: Support of S.F. 2346 - 30-Day Safe-Harbor for Income Earned by Certain Non-Resident Employees

Dear Chair Rest, Vice Chair Klein, Ranking Minority Member Weber, and Members of the Committee:

On behalf of the Council On State Taxation (COST), I am writing in support of S.F. 2346 which addresses the issue of non-resident withholding and personal income tax liability on non-resident employees temporarily working in Minnesota for less than 30 days. S.F. 2346 simplifies individual income tax filings and reduces employers' withholding and reporting burdens related to employees working less than 30 days in Minnesota and contains a reciprocity provision that would only apply to states offering similar withholding and personal income tax liability requirements, giving Minnesota residents the same benefits when they perform out-of-state work travel in a state with similar safe-harbor provisions.[1]

About COST

COST is a non-profit trade association based in Washington, DC. COST was formed in 1969 as an advisory committee to the Council of State Chambers of Commerce and today has an independent membership of over 500 major corporations engaged in interstate and international business, many of which directly conduct business in Minnesota. COST's objective is to preserve and promote the equitable and non-discriminatory state and local taxation of multijurisdictional business entities.

Non-Resident Taxation Becoming an Increasing Problem

Every day, hundreds of thousands of employees across the country are sent by their employers to work in states where they are not residents. Many of these trips are temporary in nature, with employees conducting limited business in the non-resident state for short periods of time and then returning to their resident state. Non-resident employees who travel to Minnesota for business purposes are subject to onerous administrative burdens because, in addition to filing a federal income tax return and a state income tax return in their home state, they are also legally required to file an income tax return in Minnesota, and their employers to withhold from their pay checks, if they earn in-state wages greater than or equal to the minimum income requirement for filing a state income tax return.

[1] *See* Illinois S.B. 1515 (2019); Louisiana S.B. 157 (2021); West Virginia H.B. 2026 (2021); and Kansas H.B. 2420; Montana H.B. 447; Nebraska L.B. 173 (introduced 2023).

Such a wage-based threshold is especially burdensome for employees because they do not know the exact amount of income they will earn in a year. In addition to salary, many employees earn bonuses, commissions and other perquisites throughout the year. Most of these employees do not know the amount of these payments because they are based on a variety of unknown factors, such as the economy, business performance and personal performance levels. Employees frequently receive stock commissions, relocation benefits and other benefits (*e.g.*, personal use of a company car) that generate income. These supplemental wage payments are based on factors not related to salary and cannot be estimated prior to the end of the year.

A wage-based threshold requires employers to coordinate their payroll systems with payments made to employees by third parties. Third party payments may include sick or disability payments, supplemental retirement pay, and various types of stock compensation and relocation benefits, all of which may be considered wages to the employee. It is extremely challenging for employers to track and incorporate these supplemental wages, which are generally paid outside an employer's payroll system, and add that information to the internal payroll information. When employees travel, they do not think in terms of the "dollars" earned while they are away from home but the "days" they are on business travel. A dollar threshold is not simple, and creates compliance issues for employees, employers, and even state auditors.

A Simple Solution: 30-Day Threshold

S.F. 2346 provides for a fair and easily administered law in the form of a 30-day threshold which helps individuals and businesses to stay compliant with tax return and withholding laws, greatly reducing the undue burden that the current system places on employees and employers. The 30-day threshold is a simple solution to protect non-resident employees traveling into Minnesota for a temporary period from incurring a personal income tax liability in Minnesota and employers (including businesses, associations, governments, and unions) from incurring withholding obligations for those employees.[2] Of course, a non-resident employee's earnings would be subject to income tax in Minnesota if the employee is present and performing duties for more than 30 days during the calendar year, from day one. The legislation also has a reciprocity provision to offer Minnesota's 30-day safe-harbor to only those non-resident employees whose resident state provides the same protection to Minnesota employees—a provision which will encourage other states with an income tax to adopt comparable legislation.

Conclusion

S.F. 2346 is not just a business bill – it most importantly protects individuals such as emergency workers and first responders; trade union workers; non-profit staff; teachers; federal, state and local government employees; and many others. Any organization with employees who cross state lines for temporary periods will benefit from this law. Enactment of S.F. 2346 will greatly improve Minnesota's national reputation for fair, efficient and customer-focused tax administration and we urge this Committee to pass S.F. 2346. We stand ready to assist you in your efforts to enact this important measure.

Sincerely,

Douglas L. Lindholm
President & Executive Director

cc: COST Board of Directors

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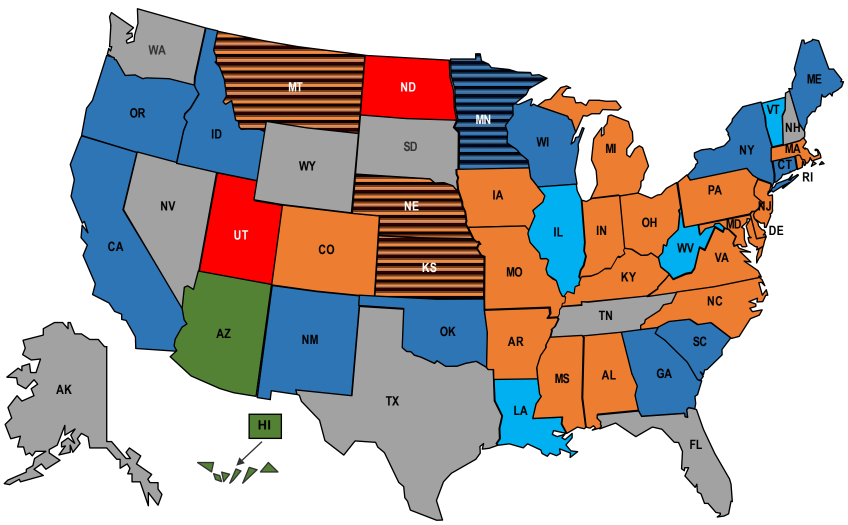
[2] The legislation provides exceptions for certain types of employees: certain professional speakers, athletes, and entertainers would be subject to Minnesota's income tax on all income earned in the State.

When is an Employer Required to Withhold for Nonresident Employees?

Important note: These don't necessarily align with an *employee's* filing requirements.



- Nonresident employee is subject to withholding on the first day of travel into the state
- Nonresident employee is subject to withholding after reaching a specific threshold
- AZ & HI: 60 days for withholding only
- IL: 30 working days (2019)
  WV: 30 days (2021)
  LA: 25 days (2021)
  VT: 30 days (withholding only- per DOT guidance)
- ND, UT: 20 days (MTC Model)
- No general state personal income tax
- 2023 30-Day Introduced Bills (*e.g.,* COST Model): KS, MN, MT, NE

Employer Must Withhold if Nonresident Employee…

Arizona	Is in the state for more than 60 days in a calendar year
California	Earns in-state wages above the state's "Low Income Exemption Table"
Connecticut	Is in the state for more than 15 days in a calendar year
Georgia	Is in the state for more than 23 days in a calendar quarter or if $5,000 or more or 5% or more of total income is attributable to Georgia
Hawaii	Is in the state for more than 60 days in a calendar year
Idaho	Earns in-state wages of $1,000 or more in a calendar year
Illinois	Is in the state for more than 30 working days in a calendar year
Louisiana	Is in the state for more than 25 days in a calendar year
Maine	Is in the state for more than 12 days in a calendar year
Minnesota	Earns in-state wages greater than or equal to the minimum income requirement for filing state income tax return ($12,900 for 2022)
New Mexico	Is in the state for more than 16 days in a calendar year
New York	Is in the state for more than 14 days in a CY and wages earned exceed personal exemptions
North Dakota	Is in the state for more than 21 days in a calendar year and is a resident of a state that provides similar protections (such as reciprocal agreements; certain employees and certain occupations not protected)
Oklahoma	Earns in-state wages of $300 or more in a calendar quarter
Oregon	Earns in-state wages equal to or exceeding the employee's standard deduction
South Carolina	Earns in-state wages of $800 or more in a calendar year
Utah	Is in the state for more than 21 days in a calendar year and is a resident of a state that provides similar protections (such as reciprocal agreements; certain employees and certain occupations not protected - (Enacted in 2022 via S.B. 39)
Vermont	30 days (per guidance on Department of Taxes website: https://tax.vermont.gov/business/withholding)
West Virginia	Is in the state for more than 30 days in a calendar year
Wisconsin	Earns in-state wages of $1,500 or more in a calendar year

Disclaimer: This information should be used for general guidance and not relied upon for compliance.
Sources: Council On State Taxation (COST), American Payroll Association (APA), Mobile Workforce Coalition

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