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March 11, 2025

Via E-mail

Representative Bill Roemer, Chair
House Ways and Means Committee
The Ohio House of Representatives

Senator Louis Blessing, Chair
Senate Ways and Means Committee
The Ohio Senate

Re: Request Consideration of “COST Model Legislation”—30-Day Safe Harbor for Income Earned by Nonresident Employees

Dear Chairs Roemer and Blessing:

On behalf of the Council On State Taxation (COST), I am writing to request that you consider the attached COST Model Legislation, either as a stand-alone bill or as an amendment to the Budget Bill. It is similar to legislation already enacted by several other states, including Indiana and West Virginia.¹ The Model would establish a 30-day safe harbor from personal income tax filing obligations for nonresident employees that travel into Ohio to perform work duties and the corresponding withholding obligation on their employers.² The legislation includes a reciprocity provision that would apply the 30-day safe harbor only to individuals from states that offer similar withholding and personal income tax liability protections to Ohio residents.

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 approximately 500 major corporations engaged in interstate and international business, many of which directly conduct business in Ohio. COST’s objective is to preserve and promote the equitable and non-discriminatory state and local taxation of multijurisdictional business entities.

Nonresident 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

¹ Enacted in Illinois (S.B. 1515 in 2019), Indiana (S.B. 419 in 2023), Louisiana (S.B. 157 in 2021), Montana (H.B. 447 in 2023), West Virginia (H.B. 2026 in 2021), and under consideration in Minnesota (S.F. 46/H.F. 950) and Alabama (H.B. 379).

² We suggest the 30-day safe harbor apply both to the State’s personal income tax and Ohio’s municipal income tax, with the 30-day safe harbor for the municipal income tax only applying to persons that are not residents of Ohio (otherwise, the current 20-day threshold would still apply).

temporary in nature, with employees conducting limited business in the nonresident state for short periods of time and then returning to their resident state. Nonresident employees who travel to Ohio for business purposes are currently 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 Ohio if they work in Ohio for just one day.³ Their employers are also required to withhold from their paychecks if the employee earns in-state wages greater than or equal to \$300 in a quarter.⁴

A Simple Solution: Impose a 30-Day Threshold with Reciprocity

The COST Board of Directors has adopted a formal policy statement on this issue. COST's policy position is:

States with individual income taxes should provide a uniform 30-day safe harbor (threshold) before nonresident workers are required to file state income tax returns and their employers are subject to withholding obligations.⁵ The current patchwork of state laws governing this area is outdated, burdensome, and inequitably subjects employees and employers to selective tax compliance and enforcement.⁶

The COST Model Legislation provides a fair and easily administered law in the form of a 30-day threshold which helps individuals and businesses 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 nonresident employees traveling into Ohio for a temporary period from incurring a personal income tax liability in Ohio and employers (including businesses, associations, governments, and non-profits) from incurring withholding obligations for those employees.⁷ Of course, a nonresident employee's earnings would be subject to income tax in Ohio from day one if the employee is present and performing duties for more than 30 days during the calendar year. Since Ohio already has income tax reciprocity agreements with its surrounding states (which this legislation will not affect) and the Model Legislation contains a reciprocity provision that applies to other states that have a similar 30-day safe harbor provision, the fiscal cost should be minimal. This additional reciprocity

³ The Ohio Department of Taxation has issued an information release indicating that it will provide a safe harbor for nonresidents that have no more than 20 days presence in Ohio and Ohio generated income of \$10,500 or less. This information release is helpful; however, as an information release it is not Ohio law, it can be altered at any time by the Tax Commissioner, it still lacks the uniform 30-day threshold, and it has a monetary cap. The release is available at: https://dam.assets.ohio.gov/image/upload/tax.ohio.gov/ohio_individual/individual/information_releases/2015-02residencyir.pdf.

⁴ State Individual Income Taxes on Nonresidents: A Primer by Katherine Loughead, Tax Foundation, January 30, 2025.

⁵ Legislation that addresses cross-border issues among the states must be uniform to be effective. Ideally, Congress will address this issue under its plenary commerce clause authority, but absent Congressional action, the states should undertake uniform action themselves. The policy goals in this statement may also be met through federal legislation.

⁶ The COST policy position on this issue can be found at <https://www.cost.org/globalassets/cost/state-tax-resources-pdf-pages/cost-policy-positions/uniform-30-day-safe-harbor-for-nonresident-employees-policy-statement-final.pdf>

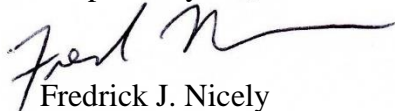
⁷ There are exceptions for certain types of employees: professional athletes, professional entertainers, and qualified production employees would be subject to Ohio's income tax on all income earned in the State.

provision is to encourage other states with an income tax to adopt comparable legislation while mitigating any income tax loss to Ohio.⁸

Conclusion

This is not just a business bill – it most importantly protects individuals such as emergency workers and first responders; 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. We thank you in advance for your consideration of the COST Model Legislation, which will greatly improve Ohio’s national reputation for fair, efficient, and customer-focused tax administration. We stand ready to assist you in your efforts to enact this important measure.

Respectfully,



Fredrick J. Nicely

cc: COST Board of Directors
Patrick J. Reynolds, COST President & Executive Director
Greg Saul, The Ohio Society of CPAs
Elizabeth Baumgartner, Ohio Chamber of Commerce

Attachment.

⁸ Ohio’s reciprocity agreements with its surrounding states based on where a taxpayer is a resident would still apply, the additional conditional reciprocity for other states having a similar 30-day safe harbor would only apply to the other states.

COST Model Legislation

Nonresident Withholding and Reporting Threshold Draft Legislation

[Section 1]

(A) *As used in this section:*

(1) *“Professional athlete” means an athlete who performs services in a professional athletic event for compensation.*

(2) *“Professional entertainer” means a person who performs services in the professional performing arts for compensation on a per-event basis.*

(3) *“Public figure” means a person of prominence who performs services at discrete events, such as speeches, public appearances, or similar events, for compensation on a per-event basis.*

(4) *“Qualified Production employee” means a person who performs production services of any nature directly in connection with a state qualified [film, television, or other commercial video production] for compensation, provided that the compensation paid to such person are qualified expenditures under [state’s incentive program], and that such compensation is subject to withholding as a condition to treating the compensation as a qualified production expenditure.⁶*

(5) *“Time and attendance system” means a system through which an employee is required, on a contemporaneous basis, to record the employee’s work location for every day worked outside the state where the employee’s employment duties are primarily performed and which is designed to allow the employer to allocate the employee’s compensation for income tax purposes among all states in which the employee performs employment duties for the employer.*

(B)(1) *Compensation, as defined under [state statute cross-reference], paid to a nonresident individual is exempt from the tax levied under [state statute cross-reference] if all of the following conditions apply:*

(a) *The compensation is paid for employment duties performed by the individual in this state for thirty or fewer days in the calendar year;*

(b) *The individual performed employment duties in more than one state during the calendar year;*

(c) *The compensation is not paid for employment duties performed by the individual in the individual’s capacity as a professional athlete, professional entertainer, public figure, or qualified production employee; and*

(d) *The nonresident individual’s state of residence: i) provides a substantially similar exclusion, or ii) does not impose an individual income tax, or iii) the individual’s income is exempt from taxation by this state under the United States Constitution or federal statute.*

(2) *Except as otherwise provided in this division, an employer is not required to withhold taxes under [state statute cross-reference] from compensation that is paid to an employee described in*

⁶ A “production employee” exception is optional, based on whether it is needed to avoid undercutting a state’s film, television, or other commercial video production incentive program.

division (B)(1) of this section. If, during the calendar year, the number of days an employee spends performing employment duties in this state exceeds the thirty-day threshold described in division (B)(1)(a) of this section, an employer shall withhold and remit tax to this state for every day in that calendar year, including the first thirty days on which the employee performs employment duties in this state.

(C) The [revenue department] shall not require the payment of any penalties or interest otherwise applicable for failing to deduct and withhold income taxes as required under [state statute cross-reference] if, when determining whether withholding was required, the employer met either of the following conditions:

(1) The employer at its sole discretion maintains a time and attendance system specifically designed to allocate employee wages for income tax purposes among all taxing jurisdictions in which the employee performs employment duties for such employer, and the employer relied on data from that system.

(2) An employer maintaining records under subsection (1) shall not preclude an employer's ability to rely on an employee's determination under subsection (3).

(3) The employer does not maintain a time and attendance system, and the employer relied on the employee's annual determination of the time the employee expected to spend performing employment duties in this state, provided, however, that the employer did not have (a) actual knowledge of fraud on the part of the employee in making the determination and (b) provided that the employer and the employee did not collude to evade taxation in making the determination.

(D) For purposes of this section, an employee shall be considered present and performing employment duties within this state for a day if the employee performs more of the employee's employment duties in this state than in any other state during that day. Any portion of the day during which the employee is in transit shall not be considered in determining the location of an employee's performance of employment duties. However, if an employee performs employment duties in a resident state and in only one nonresident state during one day, such employee shall be considered to have performed more of the employee's employment duties in the nonresident state than in the resident state for such day.

[Section 2]

The enactment by this act of [state code section] applies to taxable years beginning on and after January 1, 202X.

[Section 3]

If any provision of this act, or the application of such provision to any person or circumstance, is held to be unconstitutional, then the remainder of this act, and the application of the provisions of such to any person or circumstance, shall not be affected thereby.