

**AMENDMENT IN THE NATURE OF A SUBSTITUTE  
TO H.R. 1864  
OFFERED BY MR. COBLE OF NORTH CAROLINA**

Strike all after the enacting clause and insert the following:

**1 SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Mobile Workforce  
3 State Income Tax Simplification Act of 2011”.

**4 SEC. 2. LIMITATIONS ON STATE WITHHOLDING AND TAX-  
5 ATION OF EMPLOYEE INCOME.**

6 (a) IN GENERAL.—No part of the wages or other re-  
7 munerations earned by an employee who performs employ-  
8 ment duties in more than one State shall be subject to  
9 income tax in any State other than—

10 (1) the State of the employee’s residence; and

11 (2) the State within which the employee is  
12 present and performing employment duties for more  
13 than 30 days during the calendar year in which the  
14 wages or other remuneration is earned.

15 (b) WAGES OR OTHER REMUNERATION.—Wages or  
16 other remuneration earned in any calendar year shall not  
17 be not subject to State income tax withholding and report-  
18 ing requirements unless the employee is subject to income

1 tax in such State under subsection (a). Income tax with-  
2 holding and reporting requirements under subsection  
3 (a)(2) shall apply to wages or other remuneration earned  
4 as of the commencement date of employment duties in the  
5 State during the calendar year.

6 (c) OPERATING RULES.—For purposes of deter-  
7 mining an employer's State income tax withholding and  
8 reporting requirements—

9 (1) an employer may rely on an employee's de-  
10 termination of the time expected to be spent by such  
11 employee in the States in which the employee will  
12 perform duties absent—

13 (A) the employer's actual knowledge of  
14 fraud by the employee in making the determina-  
15 tion; or

16 (B) collusion between the employer and the  
17 employee to evade tax;

18 (2) except as provided in paragraph (3), if  
19 records are maintained by an employer in the reg-  
20 ular course of business that record the location of an  
21 employee, such records shall not preclude an employ-  
22 er's ability to rely on an employee's determination  
23 under paragraph (1); and

24 (3) notwithstanding paragraph (2), if an em-  
25 ployer, at its sole discretion, maintains a time and

1 attendance system that tracks where the employee  
2 performs duties on a daily basis, data from the time  
3 and attendance system shall be used instead of the  
4 employee's determination under paragraph (1).

5 (d) DEFINITIONS AND SPECIAL RULES.—For pur-  
6 poses of this Act:

7 (1) DAY.—

8 (A) Except as provided in subparagraph  
9 (B), an employee is considered present and per-  
10 forming employment duties within a State for a  
11 day if the employee performs more of the em-  
12 ployee's employment duties within such State  
13 than in any other State during a day.

14 (B) If an employee performs employment  
15 duties in a resident State and in only one non-  
16 resident State during one day, such employee  
17 shall be considered to have performed more of  
18 the employee's employment duties in the non-  
19 resident State than in the resident State for  
20 such day.

21 (C) For purposes of this paragraph, the  
22 portion of the day during which the employee is  
23 in transit shall not be considered in determining  
24 the location of an employee's performance of  
25 employment duties.

1           (2) EMPLOYEE.—The term “employee” has the  
2           same meaning given to it by the State in which the  
3           employment duties are performed, except that the  
4           term “employee” shall not include a professional  
5           athlete, professional entertainer, or certain public  
6           figures.

7           (3) PROFESSIONAL ATHLETE.—The term “pro-  
8           fessional athlete” means a person who performs  
9           services in a professional athletic event, provided  
10          that the wages or other remuneration are paid to  
11          such person for performing services in his or her ca-  
12          pacity as a professional athlete.

13          (4) PROFESSIONAL ENTERTAINER.—The term  
14          “professional entertainer” means a person who per-  
15          forms services in the professional performing arts  
16          for wages or other remuneration on a per-event  
17          basis, provided that the wages or other remuneration  
18          are paid to such person for performing services in  
19          his or her capacity as a professional entertainer.

20          (5) CERTAIN PUBLIC FIGURES.—The term  
21          “certain public figures” means persons of promi-  
22          nence who perform services for wages or other remu-  
23          neration on a per-event basis, provided that the  
24          wages or other remuneration are paid to such person

1 for services provided at a discrete event, in the na-  
2 ture of a speech, public appearance, or similar event.

3 (6) EMPLOYER.—The term “employer” has the  
4 meaning given such term in section 3401(d) of the  
5 Internal Revenue Code of 1986 (26 U.S.C. 3401(d)),  
6 unless such term is defined by the State in which  
7 the employee’s employment duties are performed, in  
8 which case the State’s definition shall prevail.

9 (7) STATE.—The term “State” means any of  
10 the several States.

11 (8) TIME AND ATTENDANCE SYSTEM.—The  
12 term “time and attendance system” means a system  
13 in which—

14 (A) the employee is required on a contem-  
15 poraneous basis to record his work location for  
16 every day worked outside of the State in which  
17 the employee’s employment duties are primarily  
18 performed; and

19 (B) the employer uses this data to allocate  
20 the employee’s wages for income tax purposes  
21 among all States in which the employee per-  
22 forms employment duties for such employer.

23 (9) WAGES OR OTHER REMUNERATION.—The  
24 term “wages or other remuneration” may be limited

1 by the State in which the employment duties are  
2 performed.

3 **SEC. 3. EFFECTIVE DATE; APPLICABILITY.**

4 (a) EFFECTIVE DATE.—This Act shall take effect on  
5 January 1 of the 2d year that begins after the date of  
6 the enactment of this Act.

7 (b) APPLICABILITY.—This Act shall not apply to any  
8 tax obligation that accrues before the effective date of this  
9 Act.

