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WRITTEN TESTIMONY OF JEFFREY A. PORTER, CPA

ON BEHALF OF THE

AMERICAN INSTITUTE OF CERTIFIED PUBLIC ACCOUNTANTS

BEFORE THE

COMMITTEE ON THE JUDICIARY
SUBCOMMITTEE ON COMMERCIAL AND ADMINISTRATIVE LAW
THE UNITED STATES HOUSE OF REPRESENTATIVES

HEARING ON

H.R. 1864
THE “MOBILE WORKFORCE STATE INCOME
TAX SIMPLIFICATION ACT OF 2011”

MAY 25, 2011

Mr. Chairman and members of the subcommittee, thank you for the opportunity to testify today in support of H.R. 1864, “the Mobile Workforce State Income Tax Simplification Act of 2011”. My name is Jeff Porter. I am a sole practitioner at Porter & Associates based in Huntington, WV and currently serve on the Tax Executive Committee of the American Institute of Certified Public Accountants (AICPA). At Porter & Associates, we provide accounting (non-auditing) and tax services to approximately 100 local businesses and prepare close to 900 individual income tax returns annually. We have clients in a wide range of industries, including contracting, wholesale and retail trade, medical, law, food industries, etc. Today, I am pleased to testify on behalf of the AICPA.

The AICPA is the national, professional organization of Certified Public Accountants comprised of approximately 370,000 members. The AICPA members advise clients on federal, state and international tax matters and prepare income and other tax returns for millions of Americans. The members of the AICPA also provide services to individuals, tax-exempt organizations, small and medium sized businesses as well as America’s largest businesses.

The AICPA supports H.R. 1864, “the Mobile Workforce State Income Tax Simplification Act of 2011”. 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 administrative burdens take existing resources from operational aspects of the business and may require the hiring of additional administrative staff or outside experts in order to meet the demands of compliance. These business costs could be passed on to customers and clients, but either way they incur a cost to

someone in the stream of commerce. Having a uniform, national standard for state nonresident income tax withholding and having a de minimis exemption from the multi-state assessment of state nonresident income tax would significantly ameliorate these burdens.

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. In essence, all of these entities (small businesses, accounting firms and their clients) are affected by nonresident income tax withholding laws.

Forty-three states and the District of Columbia impose a personal income tax on wages and partnership income, and there are many different requirements for withholding income tax for nonresidents among those states. Some of these states have a de minimis number of days before nonresidents working in that state must have taxes withheld and paid to that state. 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, even if present in the state for only a moment. The issue of tracking and complying with all the differing state and local laws is further complicated by the fact that a number of these states have reciprocity agreements, usually with 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. The recordkeeping and withholding a state requires can be for as little as a few moments of work in another state. The research to determine any given state's individual requirement is expensive and time consuming, especially for a small firm or small business that does not have a great amount of resources. This research needs to be updated at least annually to make sure that the state law has not changed. A small firm or business may choose to engage outside counsel to research the laws of the other states, at an additional cost. Having a uniform national standard would reduce the burden of having to constantly research the tax laws for each state where work is performed or may be performed.

In addition to uniformity, we maintain that there needs to be a de minimis exemption. AICPA has supported the 60 day limit contained in previous versions of similar legislation, but believes that the 30 day limit contained in H.R. 1864 is fair and workable. The 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. The ease of communication through the internet, along with the ease of travel and the ability to conduct business far from home is not the issue it once was. Local taxation issues have now become national in scope, and these burdens must be eased in order to promote interstate commerce and ensure it runs efficiently.

Furthermore, many smaller firms and businesses use third-party payroll services rather than performing that function in-house. A number of third-party payroll service providers cannot handle multi-state reporting. For example, third party payroll service providers generally report on a pay period basis (e.g., twice per month, bi-weekly) as opposed to a daily basis, which can be a necessity when interstate work is performed. These reporting issues require employers to track and manually adjust/override the reporting and withholding to comply with various state requirements. The alternative is to pay for a much more expensive payroll service. H.R. 1864 would provide significant relief from these burdens thereby allowing employers and firms to focus on job creation and business operations.

The 30 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 ensures that the primary place(s) of business for an employee are where that employee pays state income taxes.

As this Committee moves forward in considering this legislation, there is one amendment to the bill that the AICPA would recommend. Once the 30 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 30 days. To do so would be unfair to the employee. If the reach is retroactive, then on the 31st day of working in the other state, the employee would owe withholding to that state for the 30 day period. This could be a substantial amount, which could cause the employee to be liable for underpayment penalties. It would be unfair to require the employee to pay 30 days of withholding at once, especially where the employee is a resident of one of the other states that imposes a state income

tax. In that situation, the employee would have already had amounts withheld with respect to the home state and would now have to pay withholding twice. A refund from the home state would not be received until tax returns are filed and refunds paid. Also, in states that do not permit a credit for taxes paid to other states, no credit or refund at all would be received and the double tax would stand. This could cause cash flow challenges for employees should they find themselves in a high tax rate jurisdiction.

Again, Mr. Chairman thank you for the opportunity to testify in support of H.R. 1864, and I would be happy to answer any questions you and the Members of the Subcommittee may have.