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BY ANDREW WILFORD & MATTHEW JAMES

Texas Democrats Fleeing to D.C. Unwittingly Highlight Remote Work Problems Other Americans Face

Introduction

Last month, Democrat Texas state legislators traveled to D.C. to prevent a quorum in the Texas House of Representatives and thus stop votes in the Texas special session called by Governor Greg Abbott. They plan to remain in D.C. for an unspecified amount of time waiting out the Texas special legislative session.[1]

Like many people, some of these legislators will end up working remotely during their time away from their normal work spaces, and that's not just including the job they're in D.C. to avoid. A few examples: Texas House Democrat Caucus Chair Chris Turner works as a communications consultant, Mexican American Legislative Caucus Chair Rafael Anchía is the co-founder and Managing Director at Civitas Capital Group, and State Rep. Garnet Coleman serves on the advisory board of the Houston Children's Museum and Ensemble Theater.

Texas legislators generally enjoy one of the perks of the state's tax system — no state income tax. And fortunately for them, they chose to travel to one of the few places in the country barred from grasping at

[1] Stinson, Paul. "Texas Democrats' D.C. Escape Has Limited Staying Power." *Bloomberg*. Retrieved from: https://www.bloomberg.com/news/articles/2021-07-13/texas-democrats-d-c-escape-plan-has-limited-staying-power.

Key Facts:

- **Texas legislators have made headlines for "working remotely" in D.C. to prevent a quorum in their home state's legislature.**
- **Fortunately for them, they went to the one place in the contiguous U.S. that is federally prohibited from requiring nonresidents to pay income taxes on income earned while working there remotely.**
- **Most taxpayers aren't so lucky. Congress should consider one of a few bills already introduced that would protect taxpayers from overzealous taxation of temporary remote work.**

income earned while they are out of their home state. Most other taxpayers working remotely, however, are not so fortunate.

Current Nonresident Individual Income Tax Rules

Taxpayers who cross certain thresholds of time worked in a state are often obligated to file a nonresident tax return, paying taxes on income earned while working in that state. How *much* time an individual must work in a state to be responsible for filing a nonresident return is up to the particular state,[2] but the most common answer is just a single day. That means that nearly anyone that travels for work is technically triggering tax obligations, including people that attend trade shows or conferences or travel to other states to meet clients.

These rules are particularly an issue for employees for whom travel is a significant part of their job description. These employees, and their employers, are often forced to expend significant amounts of time and effort complying with the country's patchwork of state withholding and filing regimes, often for taxes on just a single day's income.

New York, for example, imposes some of the harshest income taxes on nonresidents. Like many states, New York requires income tax filing and employer withholding for employees who do work in that state, but New York requires this from the first day, and for those who work for New York-based businesses, it may not even require physical presence in the state at all.

Adding insult to injury, New York counts any part of the day spent working in New York as a full day of work.[3] So if someone takes a business call as they drive through New York, the state counts that as a full day for tax purposes.

In comparison,Texas legislators are fortunate indeed that they chose to travel to the only jurisdiction in the country with such a complete ban on taxation of nonresidents. This ban is enumerated in the Limitations on the Council section in the D.C. Code.[4] Nevertheless, while they do not need to worry about nonresident taxation, they may become liable for the District's income tax if they remain in town for longer than 183 days, at which time they would incur tax obligations as part-year residents.

While taxpayers have been subjected to nonresident tax obligations in most states for some time, the pandemic brought these rules — and the complexity and confusion they result in for taxpayers caught up in them — into sharp relief. Millions of Americans who switched from commuting across state lines to working remotely suddenly found that their state (and in some cases, even local) income tax obligations had changed substantially.[5]

This confusion was only heightened by states trying desperately to prevent income tax revenue from remote workers going to other states. While states like New York already had a "convenience of the employer" rule in place, states like Massachusetts temporarily instituted one. These onerous rules essentially require workers who shift from working in-state to working remotely in another state to continue paying taxes to the original state so long as they could conceivably have continued working in-state.

[2] Mobile Workforce Coalition. "Problem: A patchwork of complicated nonresident income tax laws." Retrieved from: https://www.mobileworkforcecoalition.org/problem.
[3] New York Department of Taxation and Finance. (2021). *Income Tax Definitions*. Retrieved from: https://www.tax.ny.gov/pit/file/pit_definitions.htm#nonresident.
[4] D.C. Law Library. (2021). *§ 1–206.02. Limitations on the Council*. Retrieved from: https://code.dccouncil.us/dc/council/code/sections/1-206.02.html.
[5] Hederman Jr, Rea, et al. "Taxing Beyond Borders: Principles for Ohio's Tax Policy After South Dakota vs Wayfair." *National Taxpayers Union Foundation*. Retrieved from: https://www.ntu.org/foundation/detail/taxing-beyond-borders-principles-for-ohios-tax-policy-after-south-dakota-v-wayfair; Moylan, Andrew and Wilford, Andrew. "Don't Let COVID Remote Work Become a Tax Trap." *National Taxpayers Union Foundation*. Retrieved from: https://www.ntu.org/foundation/detail/dont-let-covid-remote-work-become-a-tax-trap.

Practically, this often led to battles between states about who had the right to tax what income. Massachusetts, for example, claimed the right to tax the income of New Hampshire residents who shifted from commuting to Massachusetts to working remotely in New Hampshire — a significant issue given that New Hampshire has no state income tax. Though New Hampshire tried to challenge the issue in court (supported by NTUF),[6] the Supreme Court declined to hear the case, possibly because they mistakenly believed the issue was no longer relevant after Massachusetts dropped its rule moving forward.

Disagreements over these types of rules between two states with income taxes are common as well. Many states with high numbers of cross-border workers have reciprocity agreements that prevent confusion about tax obligations (like the Washington, DC metro area, which offers reciprocity between the District, Maryland, and Virginia), but many other places do not (like New York and its neighbors Connecticut and New Jersey, or regional neighbors like Massachusetts, Rhode Island, New Hampshire, and Maine, among many others). As NTUF documented last year, this had the potential to lead to double taxation.[7]

Not Just Individual Income Taxes

It's not just income taxes that can be confusing to taxpayers who travel around the country. Use taxes, for example, apply when taxpayers purchase items on which sales tax was not collected, or in other states with lower sales tax rates for use in their home state. In that case, the taxpayer is responsible for remitting the difference between the tax they would have owed had the item been purchased in their home state and what was collected in the other state. On this count, Texas legislators may not be so fortunate.

Use taxes are commonly unknown (or ignored), but presumably the Texas legislators responsible for writing and maintaining the state's use tax laws would be aware and follow the rules to a T. The D.C. sales tax rate is 6 percent, while Texas has a state sales tax rate of 6.25 percent and local sales tax rates as high as 2 percent. This means that Texas legislators could be responsible for paying use taxes of as much as 2.25 percent on items purchased in D.C. should they be brought back and used in Texas.

A Step to Simplification

The status quo of state taxation of income creates unnecessary roadblocks and confusion for taxpayers who travel for work. As communication technology continues to develop, this tax bias against taxpayers in the mobile workforce serves no purpose. Leaving this issue up to the states has allowed the creation of a patchwork of confusing and often overlapping rules that, worse, became even more complex and burdensome in a time of national crisis.

The solution has to come from Congress. Fortunately, the bipartisan Mobile Workforce State Income Tax Simplification Act includes notable reforms that would set a 30-day minimum before states can impose liability for individual income taxes.[8] Another bipartisan bill, the Remote and Mobile Worker Relief Act of 2021, includes the 30-day minimum and also sets this threshold to 90 days for the 2020 and 2021 tax years in recognition of the unique challenges of the pandemic.[9] By standardizing the minimum number of days before taxpayers can be held responsible for filing nonresident income tax returns, this bill would simplify currently very complex requirements and provide taxpayers with clarity and uniformity.

[6] *New Hampshire v. Massachusetts*. Brief amicus curiae of National Taxpayers Union Foundation. December 22, 2020. Retrieved from: https://www.ntu.org/library/doclib/2020/12/22o154-national-taxpayers-union-foundation.pdf.
[7] Wilford, Andrew and Moylan, Andrew. "New York's Aggressive Pandemic Tax Strategy Underscores Need for Congressional Action." *National Taxpayers Union Foundation*. Retrieved from: https://www.ntu.org/foundation/detail/new-yorks-aggressive-pandemic-tax-strategy-underscores-need-for-congressional-action.
[8] Rep. Gregory Steube. H.R. 429 - Mobile Workforce State Income Tax Simplification Act of 2021. January 1, 2021. Retrieved from: https://www.congress.gov/bill/117th-congress/house-bill/429/text.
[9] Sens. John Thune and Sherrod Brown. S. 1274 - The Remote and Mobile Worker Relief Act of 2021. April 21, 2021. Retrieved from: https://www.thune.senate.gov/public/_cache/files/77a6e088-0094-4ae9-9c4d-e26ab64e4607/18CA28B6621B84B4153EB7ECD0C33F9B.legislation---remote-and-mobile-worker-relief-act-of-2021.pdf.

The Multi-State Worker Tax Fairness Act, meanwhile, affirmatively limits the ability of states to impose tax on non-resident workers, effectively nullifying any enforcement of "convenience of the employer" rules and ensuring states can only tax workers to the extent that they're physically present in the state.[10]

Conclusion

Even though Texas legislators may manage to avoid the more onerous burdens of state income taxation of remote workers, their experience nonetheless highlights challenges facing Americans across the country. People work remotely for a number of reasons now, such as COVID-19, or taking a trip, or even trying to prevent a quorum in the Texas legislature. The tax code needs to be able to keep up so that state tax systems are fair and accessible. A bipartisan, commonsense standardization of the thresholds before taxpayers can be expected to file nonresident tax returns is an important step in this process.

About the Authors

Andrew Wilford is a Policy Analyst with National Taxpayers Union Foundation.

Matthew James is a Summer Policy Associate for National Taxpayers Union Foundation.

[10] Sen. Richard Blumenthal. S. 1887 - Multi-State Worker Tax Fairness Act of 2021. May 27, 2021. Retrieved from: https://www.congress.gov/bill/117th-congress/senate-bill/1887/text?r=4&s=1.

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2020 National Taxpayers Union Foundation
122 C Street NW, Suite 650, Washington, DC 20001
ntuf@ntu.org