

112TH CONGRESS  
1ST SESSION

# S. 1811

To amend title 4 of the United States Code to limit the extent to which States may tax the compensation earned by nonresident telecommuters.

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IN THE SENATE OF THE UNITED STATES

NOVEMBER 7, 2011

Mr. LIEBERMAN (for himself and Mr. BLUMENTHAL) introduced the following bill; which was read twice and referred to the Committee on Finance

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## A BILL

To amend title 4 of the United States Code to limit the extent to which States may tax the compensation earned by nonresident telecommuters.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Telecommuter Tax  
5 Fairness Act of 2011”.

1 **SEC. 2. LIMITATION ON STATE TAXATION OF COMPENSA-**  
 2 **TION EARNED BY NONRESIDENT TELECOM-**  
 3 **MUTERS.**

4 (a) IN GENERAL.—Chapter 4 of title 4, United  
 5 States Code, is amended by adding at the end the fol-  
 6 lowing new section:

7 **“§ 127. Limitation on State taxation of compensation**  
 8 **earned by nonresident telecommuters**

9 “(a) IN GENERAL.—In applying its income tax laws  
 10 to the compensation of a nonresident individual, a State  
 11 may deem such nonresident individual to be present in or  
 12 working in such State for any period of time only if such  
 13 nonresident individual is physically present in such State  
 14 for such period and such State may not impose non-  
 15 resident income taxes on such compensation with respect  
 16 to any period of time when such nonresident individual  
 17 is physically present in another State.

18 “(b) DETERMINATION OF PHYSICAL PRESENCE.—  
 19 For purposes of determining physical presence, no State  
 20 may deem a nonresident individual to be present in or  
 21 working in such State on the grounds that—

22 “(1) such nonresident individual is present at  
 23 or working at home for convenience, or

24 “(2) such nonresident individual’s work at  
 25 home or office at home fails any convenience of the  
 26 employer test or any similar test.

1       “(c) DETERMINATION OF PERIODS OF TIME WITH  
2 RESPECT TO WHICH COMPENSATION IS PAID.—For pur-  
3 poses of determining the periods of time with respect to  
4 which compensation is paid, no State may deem a period  
5 of time during which a nonresident individual is physically  
6 present in another State and performing certain tasks in  
7 such other State to be—

8               “(1) time that is not normal work time unless  
9       such individual’s employer deems such period to be  
10       time that is not normal work time,

11               “(2) nonworking time unless such individual’s  
12       employer deems such period to be nonworking time,  
13       or

14               “(3) time with respect to which no compensa-  
15       tion is paid unless such individual’s employer deems  
16       such period to be time with respect to which no com-  
17       pensation is paid.

18       “(d) DEFINITIONS.—As used in this section—

19               “(1) STATE.—The term ‘State’ means each of  
20       the several States (or any subdivision thereof), the  
21       District of Columbia, and any territory or possession  
22       of the United States.

23               “(2) INCOME TAX.—The term ‘income tax’ has  
24       the meaning given such term by section 110(c).

1           “(3) INCOME TAX LAWS.—The term ‘income  
2 tax laws’ includes any statutes, regulations, adminis-  
3 trative practices, administrative interpretations, and  
4 judicial decisions.

5           “(4) NONRESIDENT INDIVIDUAL.—The term  
6 ‘nonresident individual’ means an individual who is  
7 not a resident of the State applying its income tax  
8 laws to such individual.

9           “(5) EMPLOYEE.—The term ‘employee’ means  
10 an employee as defined by the State in which the  
11 nonresident individual is physically present and per-  
12 forming personal services for compensation.

13           “(6) EMPLOYER.—The term ‘employer’ means  
14 the person having control of the payment of an indi-  
15 vidual’s compensation.

16           “(7) COMPENSATION.—The term ‘compensa-  
17 tion’ means the salary, wages, or other remuneration  
18 earned by an individual for personal services per-  
19 formed as an employee or as an independent con-  
20 tractor.

21           “(e) NO INFERENCE.—Nothing in this section shall  
22 be construed as bearing on—

23           “(1) any tax laws other than income tax laws,

24           “(2) the taxation of corporations, partnerships,  
25 trusts, estates, limited liability companies, or other

1 entities, organizations, or persons other than non-  
2 resident individuals in their capacities as employees  
3 or independent contractors,

4 “(3) the taxation of individuals in their capaci-  
5 ties as shareholders, partners, trust and estate  
6 beneficiaries, members or managers of limited liabil-  
7 ity companies, or in any similar capacities, and

8 “(4) the income taxation of dividends, interest,  
9 annuities, rents, royalties, or other forms of un-  
10 earned income.”.

11 (b) CLERICAL AMENDMENT.—The table of sections  
12 of such chapter 4 is amended by adding at the end the  
13 following new item:

“127. Limitation on State taxation of compensation earned by nonresident tele-  
commuters.”.

14 (c) EFFECTIVE DATE.—The amendments made by  
15 this section shall take effect on the date of the enactment  
16 of this Act.

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