

SESSION OF 2021

SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2105

As Recommended by House Committee on
Taxation

Brief*

HB 2105 would modify individual income tax withholding requirements for employers of certain employees working in multiple states. Specifically, the bill would provide that wages or other remuneration paid to employees would be subject to Kansas withholding and reporting requirements only if the employee:

- Is a resident, or
- Has worked Kansas for more than 30 days during the calendar year and their state of residence:
 - Provides a substantially similar exclusion;
 - Does not impose individual income tax; or
 - Their income is exempt from taxation by state or federal law.

Withholding requirements involving certain public figures, professional athletes, professional entertainers, and qualified production employees, as defined in the bill, would not be affected.

In determining the time to be spent by an employee performing duties in particular states, the bill would include the following considerations:

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

- An employee would be considered to have worked a day in a state if performing more of their duties in that state than in any other;
- If a resident performs employment duties in Kansas and in only one nonresident state in a day, they would be considered to have performed more of their duties in the nonresident state;
- Transit would not be considered in determining the location of the performance or duties; and
- Employers would be permitted to rely on their own records or the employee's determination of time spent in each state, unless the employer uses a system to track the location where an employee's duties are performed.

The provisions of the bill would be deemed part of and supplemental to the Kansas Withholding and Declaration of Estimated Tax Act.

Background

The bill was introduced by the House Committee on Taxation at the request of the Kansas Chamber of Commerce.

[*Note:* The bill contains provisions similar to those of 2020 HB 2722, as recommended by the House Committee on Taxation.]

House Committee on Taxation

In the House Committee hearing, a representative of the Kansas Chamber of Commerce appeared as a **proponent** of the bill. The conferee stated the bill was recommended by the Council on State Taxation to increase the number of days a

nonresident employee can work in Kansas before being subject to Kansas withholding requirements to 30 days.

No other testimony was provided.

Fiscal Information

According to the fiscal note prepared by the Division of the Budget, the Department of Revenue indicates the bill would have a negligible impact on State General Fund receipts and would require \$600 from the State General Fund for FY 2022 to update forms and instructions.

Income taxation; withholding requirements; nonresidents