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For our payroll essential publications visit our website:
or use the search term “EY year-end checklist”
Payroll professionals are the gatekeepers of employment and withholding tax compliance, often sounding the first alarm that policies or procedures don’t pass muster. This is perhaps one of the most daunting tasks of the payroll function, particularly if the compliance alert carries personal implications to the managers and executives at the receiving end.

It is always important to consider carefully the form and content of such internal compliance advisories; however, this is particularly true when approaching topics that carry substantial reputational risk and/or affect a significant employee population. Any such communication should always quantify the extent of the risk or the steps necessary in performing a comprehensive risk assessment.

Mobile workforce payroll tax compliance is one such topic that you may need to raise (or bring up again) with the executive team. Historically, many employers believed that the cost of complying with the nonresident income tax requirements of the mobile workforce far outweighed any risk of noncompliance. Both the reality and beliefs about compliance in this area are rapidly changing.

In this issue of Payroll Perspectives, we assist you in “having the talk” about mobile workforce income tax compliance with internal stakeholders by explaining the key risk factors and audit flags they will need to consider.

We hope that you find this publication useful and that you will participate in the “Get on board” US benchmark survey.

Warmly,

Debby Salam, CPP
Editor-in-chief
Payroll Perspectives from EY

It’s not too late to participate in the US mobile workforce payroll tax compliance survey!

Bloomberg BNA and Ernst & Young LLP have launched a confidential survey giving you an opportunity to see how other businesses approach US mobile workforce payroll tax compliance. The survey questions are developed from Ernst & Young LLP’s experience in working with large global US businesses with results compiled and published by Bloomberg BNA’s survey research analysts. Survey results will be available free of charge to all who participate.

More information is available on page 6.
Payroll workshop

Why nonresident income tax withholding compliance is now a boardroom concern

By Debera Salam, CPP; Kristie Lowery, CPP; and Peter Berard, Esq., Ernst & Young LLP

Embroided in meeting a litany of employment-related mandates, companies once found it all too easy to ignore the meekly expressed concerns of accountants and payroll supervisors that employees working outside of their resident or primary work location jurisdictions might be subject to nonresident state and local income tax. This former attitude of complacency was primarily fueled by the simple fact that there was little consequence for overlooking nonresident withholding tax requirements. Withholding tax audits were rare and industry-specific, and they generally involved only athletes, entertainers and consultants. When balancing business risk with the expense of compliance, it seemed prudent to conclude that attention in this area wasn’t warranted merely because a handful of Texas employees were assisting oil crews in Louisiana or a Florida executive was taking infrequent trips to New York for stockholder meetings.

Without technology, revenue agents did not have the time or tools to identify potential non-filers and sift through the volume of data and paper files needed to support worthwhile audit findings. Put simply, tax collectors were hampered by the proverbial tail wagging the dog: insufficient revenue to devote to revenue-generating audits. Sadly for businesses, that dog has found its tail.

The New York State Department of Taxation was the pioneer of the withholding tax technology-assisted audit (TAA), followed in 2009 by the Connecticut Department of Revenue Services. Incorporating the use of technology in its payroll data analysis, New York has been able to conduct hundreds of substantial withholding tax audits each year and collect from businesses millions in underwithheld tax liabilities, penalties and interest. By requiring that businesses supply electronic files that include work state, resident state, percent of time worked in the state (or its localities, if applicable), and federal and state Form W-2 and W-4 data, jurisdictions with electronic audit capabilities like New York and Connecticut can efficiently make assertions concerning nonresidents for whom the employer has allegedly not reported wages or withheld the correct amount of state (and local) income taxes.

Once a footnote in payroll discussions, nonresident tax compliance has made headlines and reached boardrooms.

The proliferation and impact of their withholding tax audits in the past few years have been so sweeping that both New York and Connecticut have agreed that when auditing businesses, they will no longer impose nonresident income tax withholding assessments for the population of employees with primary work locations outside of their state and who reasonably expect to work fewer than 14 days in the state in a calendar year. (Connecticut AN(2010)(3); New York, TSB-M-12(5). See also New York Nonresident Audit Guidelines, and New York Withholding Tax Field Audit Guidelines.)
Joining Connecticut and New York are those states that aggressively monitor long-term deferrals (also known as “trailing compensation”), such as nonqualified deferred compensation and stock options, and assert at the time of distribution that a portion of the income was earned in the state and subject to its income tax withholding requirements. (For example, see California’s Tax Audit Guidelines.)

Modifications in the Form W-2 reporting requirements over the years (Box 12, codes V, Y and Z) and the more recent IRS requirements for statutory stock option reporting (Forms 3921 and 3922) have made it far easier for state and local taxing jurisdictions to identify underwithholding errors connected to what are frequently material items of compensation.

The results of these trends, together with an increased focus on the accurate reporting of contingent tax liabilities on financial statements (i.e., Financial Accounting Standards Board (FAS) 5) have made nonresident withholding compliance a corporate executive hot topic. More than ever, company decision-makers are inquiring about their short-term business traveler tax compliance policies and are directing their staff to begin the process of closing compliance gaps.

Today’s enforcement landscape has changed dramatically by a rise in the consequences, materiality and risks of failing to meet income tax withholding requirements. Once a footnote in payroll discussions, nonresident tax compliance has made headlines and reached boardrooms.
Why nonresident income tax withholding compliance is now a boardroom concern

Continued

Performing a risk assessment

Before concluding that the cost of mobile workforce income tax isn’t justified, it is important that businesses first perform a comprehensive risk assessment that includes all of the jurisdictions where employees travel for work. Keep in mind in this evaluation that states and localities will not necessarily disregard short trips of a few days — and neither should you. (Currently, only 23 states exclude a nonresident from income tax based on a de minimis days or wage threshold.)

To support this undertaking, comprehensive state (and local) tax research concerning the nonresident income tax withholding requirements is needed as well as information concerning penalties and other consequences of noncompliance for the applicable jurisdictions.

Overall, there are six primary risks to take into account, as shown in the chart at right.

Watch our Webcast Minutes
Click on the links below to view the videos.

The six compliance risks to consider

The top 15 income tax withholding audit flags

<table>
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<th>Top 6 noncompliance risks to consider</th>
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| 1. **Withholding tax liability.** The most significant portion of cost associated with an audit is the income tax an employer fails to withhold. Without exception, taxing jurisdictions hold the employer liable for 100% of the income tax withholding shortage. Some or all of this liability may be abated where the employer is able to obtain signed affidavits from employees similar to IRS Form 4669, wherein employees state that they have reported the wages on their income tax return and paid the applicable tax. For instance, Form DE938P is used for California personal income tax withholding. *(California Personal Income Tax Audit Adjustment Process.)*
| 2. **Penalties, interest and criminal charges.** Penalties can be assessed for underwithholding of tax, failure to timely pay tax, failure to file correct and timely withholding tax returns, and, where applicable, failure to file a state/local Form W-2. In addition, and depending on the facts and circumstances, taxing authorities may also impose higher negligence or intentional-disregard penalties and, in certain extreme circumstances, criminal charges. Some states may impose higher assessments for errors discovered through audit, further increasing the financial consequences of not voluntarily disclosing income tax withholding errors.
| 3. **Officer personal liability.** Personal liability may attach to the “responsible persons” of the business. For instance, Maryland holds the officer of the corporation who exercises direct control over its fiscal management personally liable for withholding, penalties and interest.
For this reason, taxing authorities frequently require the names and Social Security numbers of persons in the business responsible for the payment of taxes. *(See California here.)*
| 4. **Employee audits and assessments.** In order to maintain good relations with their employees, many businesses will accept responsibility for the tax assessments that may be made against their individual employees for failure to file a nonresident state or local personal income tax return. These assessments include penalty, interest and the current taxes owed on the “gross-up.”
Needless to say, an individual audit of an officer or highly paid employee might also result in additional assessments due to other source income, such as personal property, within the state.
| 5. **Loss of business license.** To add more teeth to the withholding tax requirements, other sanctions may also apply. Maryland, for instance, has the right to suspend or revoke any Maryland-issued business license of a taxpayer failing to withhold Maryland state income tax. *(Md. Code Ann., Tax-Gen., §13-707(a).)*
Government contractors may be barred from doing business with the jurisdiction, or existing contracts may be terminated for taxpayer noncompliance and the resulting outstanding tax debts. *(Federal Acquisition Regulation (FAR) 52.209-5; Los Angeles Ordinance 173677, Article 14.)*
| 6. **Loss of reputation.** The greatest risk is to the company’s brand. Bad press can travel fast if it involves a large number of employees jurisdictions or a large amount of dollars. Reputation is so vital to a business, in fact, that a number of states publish public lists of tax delinquents. Maryland is one state that uses this technique under its “Caught in the Web” policy. *(See this article for more on the use of public lists by state revenue agencies.)*
### Top 15 income tax withholding audit flags

1. The state(s) where employees perform services is actively engaged in withholding tax audits.

2. Vehicles or equipment that prominently display the company’s name and/or logo are frequently present in the jurisdiction.

3. Officers and highly paid employees frequently perform services in a particular state, and/or their presence in the state is easily documented or otherwise well-known. For example, public records reflect an upcoming acquisition, purchase or stockholder meeting.

4. Sales and use taxes are paid to the state but not income tax withholding.

5. Wages are reported on Form W-2 to the state, but no local wages are reported.

6. Expense reports show reimbursement for travel to other states and localities.

7. Accounts payable records show travel, relocation or other “out-of-state” related costs paid on behalf of employees.

8. A parent operates a subsidiary in one or more states other than the state of the parent company.

9. The company holds a corporate lease or otherwise owns property in the jurisdiction for use by its employees.

10. Employees own or lease residential property, hold driver’s licenses or are registered to vote in a state other than the resident state shown on the Form W-2 or Form W-4.

11. Unemployment insurance is paid to the state but not income tax withholding.

12. Wage and tax adjustments were filed with one taxing jurisdiction and not another. Keep in mind that the IRS has an agreement with a number of states to share tax audit findings. (See California Information sheet DE231TA, Employment Tax Audit Process.)

13. Accounting records reflect a tax reserve for contingent liabilities connected with underreported wages and related income taxes.

14. The company is under contract with the state or municipality to provide goods or services.

15. Independent contractors are substantially used in a state, irrespective of whether the company is deemed to be doing business in that jurisdiction.

Learn more at [www.ey.com/us/getonboard](http://www.ey.com/us/getonboard)
How do other businesses deal with mobile workforce income tax? Take the survey and find out

In reviewing their tax policy and procedures for short-term businesses travelers, executives frequently want to know what other similarly situated employers are doing. The challenge is that adequate benchmarking requires current, representative and independent survey data.

To fill this need, Ernst & Young LLP’s experienced employment tax professionals collaborated with Bloomberg BNA’s payroll editorial staff and qualified survey research analysts to develop a comprehensive US multistate income tax survey. The confidential survey, covering both US inbound and domestic employment, is representative of several areas of employer interest, including:

- Risk sensitivity
- Experience with state income tax withholding audits
- Methods used for securing work location data
- Frequency for withholding and paying nonresident income taxes
- Policy provisions governing:
  - Thresholds at which nonresident income tax withholding compliance is triggered
  - Frequencies used for remitting nonresident income tax withholding
  - Courtesy resident income tax withholding
  - Employee reimbursement of nonresident income taxes and return preparation fees

The survey takes just 15 minutes to complete, and participants receive a complimentary copy of the results.

The US employer multistate income tax survey is open until July 25.

Take the survey online at: www.ey.com/us/getonboard or click here.
IRS issues new guidelines for information reporting under the Affordable Care Act

The IRS recently issued additional guidance on how employers should complete Forms 1094-C and 1095-C to satisfy information reporting requirements under the Affordable Care Act (ACA). The guidance was provided in an updated set of questions and answers and a new set of set of questions and answers. Among other topics, the recently posted questions and answers provide guidance on how employers should report an offer of COBRA continuation coverage and on alternative ways for governmental units to satisfy the ACA information reporting requirements.

Background

IRC §6056, enacted by the ACA, requires each large employer (generally, those employing 50 full-time equivalent employees on average) to file a return with the IRS that reports the terms of an offer of coverage made to full-time employees during the calendar year, as well as other information. Large employers are required to provide full-time employees with this information on the Form 1095-C and to transmit the information to the IRS on Form 1094-C.

IRC §6055, also enacted by the ACA, requires employers that sponsor self-insured health plans, health insurance issuers and certain other entities to file annual returns reporting information for each individual who enrolled for minimum essential coverage. Large employers that sponsor self-insured health care plans combine the IRC §6056 offer-of-coverage information with the IRC §6055 enrollment information by providing the employees with a Form 1095-C and then transmitting the information to the IRS on Form 1094-C. Health insurance issuers are required to provide the coverage information to all enrolled individuals on Form 1095-B and to transmit the information to the IRS on Form 1094-B.

Questions and answers (Q&As)

The revised Q&As provide general guidance related to employer reporting on:

- Who is required to report
- Methods of reporting
- How and when to report the required information

Some of the noteworthy clarifications and guidance provided in the revised Q&As include:

- Confirmation that a large employer with no full-time employees for the calendar year (e.g., a member of a large-employer controlled group) generally does not have to file a Form 1095-C or Form 1094-C. However, this employer must still provide employees with the Form 1095-C and transmit to the IRS the Form 1094-C if any employee or any employee’s spouse or dependent enrolls in the employer’s self-insured health plan.
- Additional guidance on the alternative reporting methods. Employers should review these Q&As to determine if any of the alternatives would apply.
- Information on the electronic filing process, including a link to information on the Affordable Care Act Information Returns (AIR) Program.
- Clarification that an employer is not required to furnish a Form 1095-C to an employee within 30 days of the employee’s written request after the employee terminates employment (which is a requirement that applies to the Form W-2).
- Updated information on how a governmental unit may designate a related governmental entity (referred to as the Designated Government Entity) to complete the information reporting on its behalf.
IRS issues new guidelines for information reporting under the Affordable Care Act

Continued

The new set of Q&As provides more detailed guidance on how large employers should complete the Forms 1095-C and 1094-C. These new Q&As include information on the following topics:

- Basics of employer reporting
- Reporting offers of coverage and other enrollment information
- Reporting for governmental units
- Reporting offers of COBRA coverage

Some of the noteworthy issues addressed in the new Q&As include:

- How an employer reports the offer of coverage for the month in which an employee is hired or terminates employment
- How an employer reports a COBRA offer made to an employee who has terminated employment versus a COBRA offer made to an employee whose hours have been reduced
- How an employer reports coverage in the employer-sponsored, self-insured plan of a former spouse or dependent who separately elects to receive COBRA coverage
- How an employer reports enrollment information of employer-sponsored, self-insured coverage provided to an individual, such as a spouse or beneficiary, who was not an employee on any day of the calendar year
- How governmental units satisfy their reporting requirements directly or by designating a related governmental unit to complete the reporting on their behalf

Ernst & Young LLP insights

The ACA information reporting requirements can be challenging for large employers. The revised and new Q&As provide employers with welcome additional guidance on certain open issues, in particular how to report offers of COBRA continuation coverage. Nonetheless, the new Q&As still leave open questions on numerous reporting issues, including how or whether some COBRA continuation coverage offers should be reported.
IRS releases publications on electronic filing of information returns under the Affordable Care Act

The IRS recently issued two publications providing guidance on the filing of information returns that employers and health insurance companies are required to file under the Affordable Care Act effective for tax year 2015 (filed for the first time in 2016):

- **Draft Publication 5164**, *Test Package for Electronic Filers of Affordable Care Act (ACA) Information Returns (AIR)*. The IRS covered the information provided in this publication during an IRS webinar presented on May 28, 2015. The webinar addressed the process for e-services registration, Transmitter Control Code (TCC) application and test submissions.

- **Draft Publication 5165**, *Guide for Electronically Filing Affordable Care Act (ACA) Information Returns for Developers and Transmitters (Processing Year 2015)*. The IRS covered the information provided in this publication in an IRS webinar on April 30, 2015, outlining the communication procedures, transmission formats and validation procedures for returns filed electronically through the Affordable Care Act Information Return (AIR) system.

**Background**

The ACA requires health insurance issuers and certain employers to file information returns with the IRS, reporting on individuals’ health insurance coverage under IRC §§6055 and 6056.

The regulations require the information returns to be filed using Forms 1094/1095-B and Forms 1094/1095-C. Under IRC §6011(e) (2XA), any person, including a corporation, partnership, individual, estate or trust who is required to file 250 or more information returns must file these returns electronically.

**Draft Publication 5164**

Draft Publication 5164 provides an overview of the ACA Assurance Test System (AATS). The publication specifies who must be tested, what types of testing are required and when the testing will be made available. To file electronically through AIR, participants must register for e-services and complete the ACA TCC application.

The TCC applies to three separate roles: software developer, transmitter and issuer. The transmitter and issuer must complete the communications test, and the software developer must complete the AATS test submission scenarios, which include communication testing. Each entity must apply for a Receipt ID to obtain an Acknowledgement File. Following the testing, the Acknowledgement File will provide one of five statuses: accepted, accepted with errors, processing, rejected and not found.

The following rules apply to the test transmissions:

- A transmission must contain at least one transmittal, Form 1094-B or Form 1094-C.
- A transmission may consist of one or more submissions, as long as the transmission only contains either Forms 1094/1095-B submissions or Forms 1094/1095-C submissions, not both.
- A submission consists of one transmittal record, Form 1094, and the associated information return records, Forms 1095.

**Draft Publication 5165**

Draft Publication 5165 discusses key information reporting topics, such as the ability to uniquely identify each transmission, the correction process, schema and business rules, the requirement for transmitters and issuers to include their digital certificate, and the transmission validation process.

Draft Publication 5165 indicates that each TCC would be limited to approximately 1,100 transmissions. Presenters in the IRS webinar, however, indicated that the limitation will be removed. Therefore, transmitters and issuers do not need to apply for multiple TCCs.
Important facts about electronic filing of ACA information returns

- ACA Information Returns (Forms 1094-B, 1095-B, 1094-C and 1095-C) must be filed using AIR and may not be filed through the Service’s Filing Information Returns Electronically (FIRE) system.

- XML is the acceptable format for transmission. (Returns will not be accepted electronically in any other format.)

- Each transmission is limited to 100MB; transmissions larger than 100MB must be split. Approximately 10,000 returns can be submitted before exceeding the file size limit.

- Testing for Tax Year 2014 returns (voluntary year) will begin July 2015, and Tax Year 2014 returns may be filed beginning October 2015.

- Returns for Tax Year 2015 must be filed with the IRS by February 28, 2016 (in hard copy) or March 31, 2016 (electronically).

- To be considered timely, ACA Information Return errors must be corrected within 60 days of receipt of the Acknowledgement File.

Ernst & Young LLP insights

Employers that plan to submit their own Forms 1094-C and 1095-C electronically, even using licensed software, will be considered to be issuers and must register for e-services and complete the ACA Application for TCC, including the communications testing.
FASB proposal would change how companies account for employee share-based payments

The Financial Accounting Standards Board (FASB or Board) issued a proposal\(^1\) intended to simplify certain aspects of accounting for share-based payments to employees.

The proposal would amend the guidance in Accounting Standards Codification (ASC) 718\(^2\) to allow an employer to repurchase more of an employee’s shares than it can today for tax withholding purposes without triggering liability accounting. The proposal also would provide a policy election to account for forfeitures as they occur and require all income tax effects when awards vest or are settled to be recognized in income. In addition, the proposal would require awards with put features that are contingent on an event within an employee’s control to be classified as equity until it is probable that the event will occur.

The proposal also would provide two practical expedients for private companies. One would allow private companies to use a simplified method to estimate the expected term for certain awards. The other would allow them to make a onetime change in accounting principle to measure liability awards at intrinsic value if they currently use fair value.

The proposal is part of the Board’s simplification initiative to reduce the cost and complexity of financial reporting while improving or maintaining the usefulness of information reported to investors. In this initiative, the FASB is tackling narrow topics that it can address more quickly than usual.

Comments are due by August 14, 2015.

Statutory withholding

The FASB proposed simplifying the accounting for transactions in which an employee uses shares to satisfy the employer’s statutory income tax withholding obligation (i.e., the employer repurchases some of the employee’s shares and uses the cash to pay income taxes it is obligated to withhold on the employee’s behalf). The proposal would amend current guidance to allow an employer with a statutory income tax withholding obligation to repurchase an employee’s shares to cover income taxes on the award without triggering liability accounting, provided that the value of the shares repurchased does not exceed the amount calculated using the employee’s maximum individual statutory tax rate in the applicable jurisdiction.

Under current guidance, if the fair value of the shares withheld exceeds the employer’s minimum statutory withholding obligation, the entire award must be classified as a liability. Liability accounting requires a company to remeasure an award at fair value each reporting period until it is settled. Companies would apply the proposal to outstanding liability awards at the date of adoption using a modified retrospective transition method, with a cumulative-effect adjustment to retained earnings.

The proposal would require that an employer classify the cash paid to repurchase shares from employees to satisfy its statutory income tax withholding obligation as a financing activity on its statement of cash flows. Companies would apply this guidance using a retrospective transition method.

Implications: As a result of the proposal, companies could repurchase shares from employees in high income tax brackets for withholding purposes without triggering liability accounting for those employees’ awards.
FASB proposal would change how companies account for employee share-based payments

Continued

Accounting for forfeitures

The proposal would allow companies to elect to account for forfeitures of share-based payments meeting certain conditions as they occur (e.g., when an employee leaves the company) or to estimate forfeitures and adjust the estimates as they change, as is currently required. This election would apply to awards with only service conditions and those with performance conditions that are deemed probable to occur at the date of grant. Companies would make this accounting policy election at an entity level (i.e., for all share-based payments they grant) when they implement the guidance and would apply it using a modified retrospective transition method, with a cumulative-effect adjustment to retained earnings.

Classification of awards with repurchase features

The FASB proposed aligning the classification guidance for awards with put and call rights that are contingent on an event within an employee's control (e.g., an employee's decision to leave the company). A company would focus solely on the probability that the contingent event would occur to determine whether to classify these awards as liabilities or equity (i.e., which party controls the contingent event would no longer be relevant). Companies would apply this guidance using a modified retrospective method with a cumulative-effect adjustment to additional paid-in capital (modification accounting would be used to apply the new guidance to outstanding awards at the date of adoption).

Implications: Today, some companies use the guidance on contingent repurchase features in Emerging Issues Task Force (EITF) Issue No. 00-23, which predates ASC 718, while others do not. The proposed clarification should reduce diversity in practice.

Private company practical expedients

The Board proposed providing a practical expedient for private companies to use to estimate an award's expected term instead of making a more precise estimate as described in ASC 718. If an award includes only a service condition for vesting, a company could estimate the expected term as the midpoint between the vesting date and the contractual term. If an award includes a performance condition, a company would first assess at the date of grant whether it is probable that the performance condition will be met and, if that is the case, the company could estimate the expected term as the midpoint between the requisite service period (the longer of the service or performance period) and the contractual term. If it is not probable that the performance condition will be met, a company could estimate the expected term as the contractual term. Private companies would have to apply this proposed practical expedient prospectively to all awards that must be measured at fair value.

The Board also proposed allowing private companies to elect a one-time change in accounting principle to measure liability-classified awards at intrinsic value, if they currently measure them at fair value. Private companies that apply this practical expedient would use a modified retrospective transition method, with a cumulative-effect adjustment to retained earnings.

Implications: While the proposal does not address this point, any deferred tax assets recorded upon adoption as a result of recognizing excess tax benefits would need to be assessed for realizability under ASC 740. If a valuation allowance on those deferred tax assets is necessary on the date of adoption, the valuation allowance would be recorded with an offset to opening retained earnings.
The FASB’s proposal would retain the definition of a public entity in ASC 718 for determining whether a private company is eligible to apply the proposed practical expedients. It would not use the FASB’s new broader definition of a public business entity.

**Implications:** The proposed practical expedient for estimating an award’s expected term would be especially useful for private companies that do not have relevant historical data to objectively support the estimated term. The proposed onetime change in accounting principle to measure liability-classified awards at intrinsic value provides a second chance to those companies that didn’t elect this method when they adopted FASB Statement No. 123(R).

**Disclosures and effective date**

The proposal would require companies to make the disclosures about a change in accounting principle under ASC 250-10-50-1 through 50-3, but they would not have to quantify the effect of the change on the income statement in the period of adoption.

The proposal does not include an effective date. The Board plans to ask stakeholders how much time companies would need to implement the proposed changes.

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**Endnotes**

1 Proposed Accounting Standards Update (ASU), Compensation – Stock Compensation (Topic 718): Improvements to Employee Share-Based Payment Accounting.
2 Accounting Standards Codification (ASC) 718, Compensation – Stock Compensation.
3 Excess tax benefits as defined in the ASC’s Master Glossary.
4 Tax deficiencies occur when the amount deductible for an award of equity instruments on the employer’s tax return is less than the cumulative compensation cost recognized for financial reporting purposes.
5 Under today’s guidance, tax deficiencies are recorded in the income statement if a company does not have a qualifying pool of excess tax benefits. If a qualifying pool of excess tax benefits exists, the tax deficiency is recorded to APIC.
Mobile workforce state income tax simplification gains momentum in the House

As we previously reported (Payroll Perspectives, June 2015), the House joined the Senate on May 14, 2015, in introducing bipartisan legislation to simplify state income tax for nonresident business travelers and their employers.

Of significant note, the bill would prohibit states from imposing a nonresident income tax on individuals who work within a state for 30 or fewer days in a calendar year. (Mobile Workforce State Income Tax Simplification Act of 2015, HR 2315/S.386).

Positive movement once again in the House

On June 17, 2015, the House Judiciary Committee passed HR 2315 by a vote of 23 to 4, a necessary step in bringing the bill before the full House for a vote.

John Conyers (D-MI), the ranking member of the House Judiciary Committee, noted that revisions are needed to HR 2315 to eliminate the adverse impact on states’ revenues.

According to the Council on State Taxation (COST), New York members of the House Judiciary Committee offered three amendments that were ultimately rejected, including (1) a reduction in the threshold to 14 days, (2) an exclusion from protection for individuals earning $130,000 or more in a year and (3) an exemption for states that would lose more than $25 million due to the law (applicable only to New York).

Passage of the Mobile Workforce State Income Tax Simplification Act by the House is not out of the question; it happened in 2012. The question remains if the bill will have the same momentum in the Senate. There are some who believe that changes in the leadership of the Senate Finance Committee may give this bill a better chance of passing in the Senate than it had in 2012.

Current opposition

In 2012, the Federation of Tax Administrators (FTA) adopted a resolution withholding its support of federal legislation that would limit states from imposing nonresident income tax. The FTA states that such legislation “represents a substantial preemption and intrusion into state tax authority” and that “a simple days’ threshold will expose some jurisdictions to substantial revenue disruptions.”

In summary, the FTA revoked its support of federal legislation in favor of states’ voluntary adoption of the Model Mobile Workforce Statute (MMWS).

In testimony before the House Judiciary Committee on June 2, 2015, the National Governors Association echoed the views and concerns of the FTA, stating, “The federal government should avoid legislation and regulations that restrict or prohibit, either directly or indirectly, sources of state revenues or state taxation methods that are otherwise constitutional.”
Alabama

Additional changes to withholding tax return filing rules are proposed

The Alabama Department of Revenue is proposing further changes to its withholding tax return regulations, including the requirement that employers and withholding agents file their Forms W-2 electronically if they are required to file and pay monthly or quarterly withholding taxes electronically. (Ala. Rules 810-3-74-.01; 810-3-75-.03.)

Employers and withholding agents making withholding tax payments of $750 or more are required to file the monthly or quarterly payments and returns electronically. All employers and withholding agents submitting 25 or more Forms W-2 and/or information returns (if Alabama income tax has been withheld) must submit Forms W-2/1099 and the annual reconciliation electronically through the Department’s website.

The rule change would also remove reference to obsolete Alabama Form A-2, a previous state substitution for Form W-2.

Accelerated filing due for the Forms 1099

As we reported in the May 2015 issue of Payroll Perspectives, the due date for filing calendar year 2015 Forms W-2 and the Form A-3 annual reconciliation with the Department is January 31, 2016, accelerated from the February 28 deadline for previous years.

For consistency with the filing due date of Forms W-2, the proposed regulations would also require that Forms 1099 showing income tax was voluntarily withheld from retirement distributions, pensions, interest payments or other nonwage payments be submitted to the Department by January 31 with Form A-3. Currently, the filing deadline for Forms 1099 is February 28.

The rule change would also remove reference to Alabama Form 99, a previous state substitution for Form 1099. (Ala. Rules 810-3-75-.04.)

Another filing due date also proposed to be changed to January 31 from February 28 is the listing supplied to the Department that allocates the income tax withheld on behalf of employers to the appropriate withholding tax accounts. This listing is required of third-party payers, such as insurance companies, making sick payments to an employer’s employees. (Ala. Rules 810-3-75-.05.)

Arizona

Short-term federal unemployment insurance loan is repaid; trust fund expected to return to solvency

The Arizona Department of Economic Security announced that the state has fully repaid its short-term federal UI loan and anticipates that the state’s UI trust fund will remain solvent throughout the remainder of 2015 and beyond. (News release, Arizona Department of Economic Security, May 2015.)

Arizona started borrowing from the federal government in March 2010 in order to pay regular state UI benefits. In September 2013, the Department issued $200 million in tax-exempt securities to pay off its federal UI loan and return the net Federal Unemployment Tax Act (FUTA) rate to 0.6% for calendar years 2013–14. Arizona employers paid at an increased FUTA rate for calendar year 2012 when a FUTA credit reduction of 0.3% went into effect. The notes were repaid by mid-2014 through normal SUI tax collections. The state then borrowed again on a short-term basis from the federal government beginning in June 2014, repaying the remaining approximately $44 million last month.

The Department anticipates the trust fund will remain solvent through the remainder of 2015 and beyond barring any unforeseen economic downturn. Had the state not repaid its loan, and if further borrowing is necessary in 2015, a FUTA credit reduction could be possible for calendar year 2016.

Six states currently have outstanding federal UI loan balances: California, Connecticut, Indiana, Kentucky, Ohio and the Virgin Islands. California has the largest outstanding balance, standing at over $5.3 billion as of June 3, 2015.
California

Los Angeles mayor signs ordinance to incrementally increase minimum wage to $15 per hour in 2020

On June 13, 2015, Los Angeles Mayor Eric Garcetti signed a minimum wage increase measure into law that will increase the city's minimum wage incrementally to $15.00 per hour by July 1, 2020. (News release, mayor's office.)

The minimum wage will be increased on the following schedule:

<table>
<thead>
<tr>
<th>Date</th>
<th>Wage</th>
</tr>
</thead>
<tbody>
<tr>
<td>July 1, 2016</td>
<td>$10.50</td>
</tr>
<tr>
<td>July 1, 2017</td>
<td>$12.00</td>
</tr>
<tr>
<td>July 1, 2018</td>
<td>$13.25</td>
</tr>
<tr>
<td>July 1, 2019</td>
<td>$14.25</td>
</tr>
<tr>
<td>July 1, 2020</td>
<td>$15.00</td>
</tr>
</tbody>
</table>

For businesses and nonprofits with 25 or fewer employees, the increase will happen on the below schedule:

<table>
<thead>
<tr>
<th>Date</th>
<th>Wage</th>
</tr>
</thead>
<tbody>
<tr>
<td>July 1, 2017</td>
<td>$10.50</td>
</tr>
<tr>
<td>July 1, 2018</td>
<td>$12.00</td>
</tr>
<tr>
<td>July 1, 2019</td>
<td>$13.25</td>
</tr>
<tr>
<td>July 1, 2020</td>
<td>$14.25</td>
</tr>
<tr>
<td>July 1, 2021</td>
<td>$15.00</td>
</tr>
</tbody>
</table>

Youth wages will be 85% of the minimum wage for workers age 14 to 17 years old.

Wage-theft ordinance also to be enacted

In addition to the increase in the minimum wage, Mayor Garcetti plans to also sign an ordinance into law passed by the City Council that will establish a wage enforcement division, the Office of Labor Standards (OLS), with $500,000 budgeted in fiscal year 2015-16 to fund investigators and outreach efforts to ensure businesses are paying workers correctly. The ordinance establishes administrative fines and penalties for instances of “wage theft.”

Employers will be required to post notices to employees of the minimum wage and their rights under the wage-theft ordinance. The notices must be in the language of employees that make up 5% or more of the workforce. Employers are also required to supply employees in writing with the business's name, address and telephone number.

In addition to payment of erroneously unpaid wages, an employer found guilty of wage theft or another violation of the wage-theft ordinance may be liable for payment to the employee of $100 per day in violation and payment to the city of administrative fines ranging from $500 to $1,000 per day in violation, with the fines increasing by 50% for each subsequent violation of the same provision within a three-year period.

The ordinance is available here.
Connecticut

Emplovers will again pay higher FUTA in 2015; special interest assessment to go down

A representative of the Connecticut Department of Labor confirmed that as in 2014, the state does not plan to request a waiver of the Benefit Cost Rate (BCR) add-on to the FUTA credit reduction for calendar year 2015. As a result, the Department states that the FUTA tax rate is anticipated to increase to as high as 2.8% for calendar year 2015, up from 2.3% for calendar year 2014.

The state could request a waiver of the BCR add-on by July 1, 2015, which would hold down the FUTA tax rate for its employers. However, the Department states that by letting businesses pay at the higher FUTA tax rate, it hopes to be able to pay off its outstanding federal loan balance in 2016, one year earlier than projected this time last year and two to three years sooner than would have been possible had the BCR waivers been requested. (Telephone conversation, June 8, 2015.)

The document currently posted to the U.S. Department of Labor’s website reflecting the potential 2015 FUTA credit reductions shows an estimated BCR add-on of 0.7% for Connecticut (a revision in February 2015 showed 0.6%). A U.S. Department of Labor official, responding to our request for clarification concerning the rate discrepancy, recommends that employers accrue at the higher 0.7%. (Email response to inquiry, June 8, 2015.)

2015 special interest assessment expected to decrease

Another Connecticut Department of Labor representative tells us that the 2015 special-interest assessment paid by employers to cover the interest due on the federal UI loan is expected to decrease to approximately $3 per employees, down from $7.50 per employee for 2014. (Email response to inquiry, June 8, 2015.)

The Department should mail the 2015 interest assessment notices to employers on August 1, 2015, with payment due by the end of August.

FUTA taxes rise sharply for Connecticut employers for calendar year 2014–15

Connecticut employers paid at a sharply higher net FUTA rate of 2.3% for 2014 because the state did not request a waiver of the BCR add-on to the FUTA credit reduction that first triggered for the state last year. As stated above, this rate is expected to rise to as much as 2.8% for 2015 (computed as the 0.6% normal FUTA rate + 1.5% standard credit reduction + 0.7% BCR). Should officials change their minds and decide to request the BCR waiver this year, and if approved, the 2015 FUTA rate would be 2.1%. Payment of the additional FUTA taxes resulting from the credit reduction will be due with the fourth-quarter 2015 deposit.

Georgia

Legislation will affect how employers are charged for unemployment insurance benefits

Recently enacted legislation will change the definition of “most recent employer” under unemployment insurance (UI) law for the purpose of determining the employer to which UI benefits paid to a former employee must be charged. (HB 117/Act 113, signed by the Governor on May 6, 2015.)

Effective with UI benefit years that begin on or after July 1, 2015, the term “most recent employer” for purposes of UI benefit charging is simplified to mean the last employer for whom an individual worked. However, benefits charged to the last employer’s account must not exceed the amount of wages paid by the employer during the period beginning with the claimant’s base period and continuing throughout the claimant’s benefit year. When UI benefits exceed the amount of wages paid to a claimant, the remaining benefits will be charged against the state’s unemployment trust fund and not a specific employer’s account. (Telephone conversation, representative, Georgia Department of Labor, legal department, May 26, 2015.)

Per a Georgia Department of Labor legal representative, the change in the definition of “most recent employer” means that as of July 1, 2015, only the last employer is potentially liable for UI benefit charges and not all employers that provided wages to an individual within his or her base period. The last employer, whether the individual worked for it for one day or longer, must be prepared to respond timely and adequately to requests for wage/separation information and claims for UI benefits.

Under previous law, an employer must have paid an individual insured wages of at least 10 times the former employee’s weekly UI benefit amount to be considered the “most recent employer,” and as such, the chargeable employer. If no employer meets this definition, then the last liable employer for whom the individual worked would be considered the chargeable employer.

Law expands provision allowing for UI benefits when an individual leaves employment voluntarily

HB 117 changes UI law to provide circumstances under which an employee that voluntarily leaves employment as a result of domestic violence may collect UI benefits. Benefits paid under these circumstances are not charged against an employer’s account.
Limited expansion of statute of limitations for UI tax refunds

The law also expands the statute of limitations to allow the Commissioner of Labor to initiate a refund of erroneously collected UI taxes to employers within seven years (formerly three years) of when the tax payment was made. However, the statute of limitations for employer-initiated requests for adjustment or refund of overpaid UI taxes remains at three years.

Ernst & Young LLP insights

Remember, benefits charged to the employer's account will ultimately influence the UI tax rate assigned; therefore, employers will need to take into account the revised rule concerning “most recent employer” in reviewing their benefit charge statements for errors.

As we reported previously, effective October 22, 2013, employers that fail to respond to written requests for information from the Department with adequate information and/or by the specified deadline regarding three separate unemployment insurance claims established during a calendar year will be charged for benefits paid on all subsequent claims paid during that year. These charges will apply regardless of whether the Department’s benefits determination is later reversed on appeal or if an overpayment of benefits is established and collected.

Indiana

Business held liable for income tax withholding on misclassified workers’ earnings

The Indiana Department of Revenue recently ruled that a business did not provide adequate justification for treating two general managers as independent contractors. As a result, the Department reclassified the general managers as employees and required the employer to pay state and county income tax if failed to withhold from the payments made to the workers. (May 27, 2015).

The Department determined that the business bore the burden of proving the withholding tax assessment was incorrect under IC section 6-8.1-5-1(c). Of 10 factors weighed by the Department, only two supported the business’s assertion that the workers were independent contractors.

This case highlights the tough standards Indiana and its counties can apply when determining if a worker is an employee or an independent contractor.

Considerations

Under Indiana law (IC section 6-3-4-8(a)), employers are required to withhold, collect, and pay over income tax on wages paid to employees. For these purposes, “An employer-employee relationship exists when the person for whom services are performed has the right to control and direct the individual who performs the services, not only as to the result to be accomplished by the work but also as to the details and means by which that result is accomplished.”

The Department reviewed a 10-factor test to determine if the general managers were employees or independent contractors.

Business did not provide compelling evidence of independence

The Department evaluated factors including:

(a) The extent of control the business exercised over details of the work
(b) Whether the workers are engaged in a distinct occupation or business
(c) Whether the work is usually done under the direction of the employer or by a specialist without supervision
(d) The skill required in the particular occupation
Whether the employer or worker supplies tools, equipment and materials

The length of time the workers were employed

The method of payment, whether by time or by the job

Whether the work is part of the regular business of the employer

Whether the parties believe they are creating the relation of master and servant

Whether the principal is or is not in business

In this case, the business demonstrated only two of these factors, (a) and (i), in support of treating the workers as independent contractors, while the Department found that five factors, (c), (d), (g), (h) and (j), supported an employer-employee relationship. The Department also noted there was no written agreement between the business and the workers; they were paid a flat weekly fee, the business paid anyone hired by the general managers, and the business could terminate their employment at any time.

The Department concluded that despite some indicators of independence, there was sufficient direction and control over the general managers’ services to establish an employer-employee relationship. As a result, the business was found liable for income tax withholding not deducted from the general managers’ earnings and paid over to the state.

Indiana due date for filing Forms W-2 and annual reconciliation accelerated to January 31, 2016

Recently enacted legislation requires that effective July 1, 2015, Indiana employers file Form WH-3, Annual Withholding Reconciliation, with the Indiana Department of Revenue not later than 31 days after the end of the calendar year. As a result, the due date for Form WH-3 and corresponding Forms W-2 is changed to January 31, accelerated from February 28.

Calendar year 2015 Forms W-2/WH-3 will be due to the Indiana Department of Revenue on January 31, 2016. (HB 1472, Public Law 242; telephone conversation, withholding tax customer service.)

Employers filing 25 or more Forms W-2 are currently required to submit these forms electronically over the INtax electronic filing system. For more information on filing requirements, go here.

Is January 31 the new normal for filing Forms W-2?

Indiana joins several other states (i.e., Alabama, Utah, Virginia) that recently passed legislation to accelerate the deadline for filing state Forms W-2 and annual reconciliation returns to January 31, a move also included in the Obama Administration’s budget proposal as a means of combatting tax fraud connected with phony Forms W-2.

For years now, the IRS has wanted employers to file Forms W-2 sooner, but the proposal has met with strong opposition from businesses. A change in the federal Form W-2 filing due date to January 31 is increasingly likely as more states require it.

More information on the President’s fiscal year 2016 budget proposals would impact employers, click here.

Ernst & Young LLP insights

Worker classification is a complex and increasingly important consideration, with potential consequences for withholding tax, wage and hour compliance, workers’ compensation, and unemployment insurance.

Federal and state governments are devoting more resources to the prevention and detection of worker misclassification. For example, during 2014, the U.S. Department of Labor announced a $10 million state grant to assist them with in detecting worker misclassification.

Read our special report on worker classification here.
Kansas

Legislation makes various income tax changes

On June 16, 2015, Governor Sam Brownback signed into law S. Sub HB2109 and SB 270, which includes a number of changes in the state’s income tax law, including an exemption from income tax for low-income taxpayers and an income tax on the guaranteed payments made to business owners of limited liability companies (LLCs), regardless of profit.

The Legislature faced challenges this year in addressing budget shortfalls caused by personal income tax cuts that began in 2013. Governor Brownback presented a tax plan that would preserve the current income tax cuts and eliminate income taxes for 388,000 low-income taxpayers by implementing an increased general sales tax at 6.65% and raising cigarette taxes by an additional 50 cents. Another $24 million is expected in the next fiscal year by reinstating the income tax on guaranteed payments made to business owners through an LLC.

In a June 12, 2015, press release, the Governor praised the bill for continuing the state’s transition from taxes on productivity to consumption-based taxes and providing a mechanism for reducing income tax rates for all Kansas taxpayers.

Income tax changes

The following income tax changes apply.

- **Income tax exclusion for low-income taxpayers.** A special low-income exclusion provision applies effective in tax year 2016 that generally eliminates all positive income tax liability for single filers with annual taxable income of $5,000 or less and for married taxpayers filing jointly with taxable income of $12,500 or less.

- **Postponement of future scheduled income tax reductions.** The tax year 2015 rates of 2.7% for the bottom tax bracket and 4.6% for the top tax bracket remain the tax rates through tax year 2017. The tax rates for tax year 2018 and all future years are 4.6% for the top tax bracket and 2.6% for the bottom tax brackets. Income tax cuts automatically resume in 2020 if revenues reach certain targets.

- **Guaranteed payments constitute wages.** Guaranteed payments made to businesses owners of an LLC are treated as wages and subject to Kansas income tax, without regard to the profits of the business.

- **Elimination of most itemized deductions.** Effective January 1, 2015, all Kansas itemized deductions are repealed except for charitable contributions and 50% of mortgage interest and property tax payments.

- **Amnesty.** A tax amnesty period is available for penalties and interest on certain delinquent taxes provided such taxes are paid in full from September 1, 2015, to October 15, 2015. The amnesty applies to privilege, income, estate, cigarette, tobacco products, liquor enforcement, liquor drink, severance, state sales, state use, local sales, and local use taxes and is limited to penalties and interest applied to liabilities associated with tax periods ending on or before December 31, 2013.

2012 income tax changes

Under HB 2117, which took effect January 1, 2013, individual income tax rates were lowered at all levels. In addition, the current three-tier structure was replaced by a two-tier structure, the standard deductions for individual income tax have been increased, and the calculation of an individual’s Kansas income tax was set to start with federal adjusted gross income. Certain modifications required by K.S.A. 79-32,117, either additions or subtractions, were also made to arrive at Kansas adjusted gross income. (See EY Payroll NewsFlash, Vol. 13, 210, September 17, 2012, for more information.)

Provisions of HB 2117 added five new addition modifications and one new subtraction modification to K.S.A. 79-32,117. The overall effect of these new provisions is to exempt certain categories of income from Kansas income tax.

Under HB 2117, a nonresident owner of a Kansas S corporation, a partner in a Kansas partnership or a member of a Kansas limited liability company is not be subject to Kansas income tax on income that is properly reported on federal Schedule C, E, or F and on lines 12, 17 or 18 of federal Form 1040. As a result, income reported on these schedules and lines is currently not subject to Kansas withholding tax. Nonresident owners receiving taxable income that is not properly reported on the applicable federal forms/lines (i.e., taxable income) are subject to nonresident owners’ withholding. (HB 2117, signed by the Governor on May 22, 2012; Notices 12-06, 12-10, 12-11, Kansas Department of Revenue.)
Kansas law revamps SUI rate calculations and decreases UI benefit calculation

Effective January 1, 2016, recently enacted legislation will revamp state unemployment insurance (SUI) rate calculations through a fixed standard rate table for positive- and negative-balanced employers and by the addition of a plus or minus solvency assessment based on the state trust fund’s yearly average high cost multiple (AHCM).

Also, effective July 1, 2015, the bill will change the calculation of the Kansas maximum unemployment insurance (UI) benefit amount from the current 60% of the average weekly wage paid to employees in insured work in the previous year to the greater of 55% of the average weekly wage paid to employees in insured work in the previous year or $474, the current maximum weekly benefit amount. (SB 154)

Calculation of SUI tax rates effective January 1, 2016

Beginning for rate year 2016, employers with positive account balances will be assigned a basic tax rate within 27 rate groups, ranging from 0.20% to 5.4%. Under current law, positive-balanced employer rates are arrayed across 51 rate groups.

Employers with negative balances will be assigned a basic tax rate within 11 rate groups, ranging from 5.6% to 7.6%. Currently, negative-balanced employers are assigned a basic rate of 5.4%, plus a surcharge arrayed across 10 rate groups.

Also starting in rate year 2016, the planned yield, which is the estimated amount of employer contributions necessary to finance UI for the year, will no longer be utilized. Instead, a solvency adjustment from –0.5% to 1.6%, depending on the average high cost multiple (AHCM), will be added to the basic employer tax rates for both positive- and negative-classified employers.

The AHCM will be determined based on the UI trust fund’s reserve ratio (the trust fund balance as of July 31, divided by total payroll for contributing employers) divided by the average high benefit cost rate (an average of the three highest ratios of benefits paid to total wages in the most recent 20 years). (Conference committee report brief for SB 154.)

Businesses expanding their Kansas operations get less of a rate incentive under new law

The law also amends the provision that allows an experience-rated employer that has a positive account balance and is expanding its operations in such a way as to increase its taxable payroll by at least 100% to mitigate the negative effect of the increase in taxable payroll on its experience rate by receiving a SUI tax rate of 2.7% rather than its higher experience rate for a period of three calendar years (down from four calendar years). To be eligible for the reduced rate, the employer must maintain a positive account balance for the three years and see an increase in its account balance in each of the three years.

Kansas Department of Labor releases updated new hire reporting website

The Kansas Department of Labor launched a new website to provide employers with detailed information about reporting new hires, including how to report online and other reporting options. Reporting requirements remain the same. For more information, go to the new website.

Ernst & Young LLP insights

Employers will need to carefully review their 2016 Kansas SUI rate notices, making sure that the new law was correctly applied to them. The 2016 rate notices are anticipated to be mailed this November.

Employers also should review their benefit charge statements carefully, paying close attention to the lesser weekly benefit calculation that applies starting July 1, 2015.

Finally, this legislation could have a significant impact on some employers’ SUI contributions. Accordingly, these changes should be taken into account when forecasting future contributions.
State news

Louisiana

Legislation limits credit for income tax paid to other states

Under legislation recently passed by the Louisiana House and Senate (HB402), and signed into the law by the Governor on June 19, 2015, the credit that resident taxpayers are currently allowed for income tax paid in other states is subject to new restrictions that could have the result of increasing Louisiana resident income tax for its business travelers.

Present law authorizes an individual income tax credit against resident income tax in an amount equal to income taxes that were paid for the same taxable period to another state on income that is subject to Louisiana income tax.

Effective July 1, 2015, through June 30, 2018, this income tax credit is limited as follows:

- The credit is allowed if the other state provides a similar credit for Louisiana income taxes paid on income derived from property located in Louisiana, services rendered in Louisiana and business transacted in Louisiana.
- The credit is limited to the lesser of the proportional credit limitation amount or the actual tax paid to the other state. The "proportional credit limitation amount" would mean the amount of Louisiana income tax that would have been imposed if the income earned in the other state had been earned in Louisiana.
- A credit is not allowed for income taxes paid to a state that allows a nonresident a credit against the income taxes imposed by that state for taxes paid or payable to the state of residence.

Louisiana income tax refund deduction

Currently, Louisiana law allows taxpayers to subtract Louisiana income tax refunds from their federal taxable income when calculating Louisiana taxable income. HB 624, also enacted on June 19, 2015, reduces the subtraction modification of Louisiana income tax refunds from 100% of the refund to 72% of the amount of the refund.

Effective date

Unless otherwise stated, all of the changes referenced apply to originally filed returns that claim the exclusion, deduction or credit filed on or after July 1, 2015, regardless of the tax year to which the return relates. If a 2014 extended return or a prior year originally filed return is filed prior to July 1, 2015, the bill allows taxpayers to amend that return after July 1, 2015, to avoid the retroactive effects of the legislation, provided that any of the items adjusted by the legislation were properly claimed on the original return.

Additionally, if a 2014 return is filed after June 30, 2015, and a valid filing extension has been allowed prior to July 1, 2015, then any portion of an exclusion or deduction disallowed by this legislation is allowed as an exclusion, deduction or credit in the amount of one-third of the disallowed portion of the exclusion, deduction or credit on the taxpayer's return for each of the tax years beginning during calendar years 2017, 2018 and 2019.

Ernst & Young LLP insights

The recent U.S. Supreme Court decision in Maryland vs. Wynne has placed considerable focus on the extent to which jurisdictions are required to give their residents credit for nonresident income taxes they pay. (Comptroller of the Treasury of Maryland vs. Wynne, Dkt. No. 13-485, May 18, 2015.)

At the same time, the issue of reducing resident income taxes in consideration of a jurisdiction's outbound business travelers can have a significant adverse impact on tax revenues, in particular when a state has comparatively lower revenues from nonresident traffic than others.

For these reasons, we can expect a trend of changing tax policy in this area.

Businesses should monitor this Louisiana development closely and consider how it might affect Louisiana employees who work in other states (consider, for instance, neighboring states of Arkansas, Mississippi, Oklahoma and, for other than personal income tax, Texas).
Massachusetts

Paid sick leave transition relief available through 2015

In a statement released on May 18, 2015, the Massachusetts Attorney General’s Office announced a six-month transition period to the state’s sick leave provisions for employers that already have a paid sick leave program in place.

For July 1 to December 31, 2015, any employer with a paid-time-off policy in existence as of May 1, 2015, providing to employees the right to use at least 30 hours of paid time off during the calendar year 2015, shall be in compliance with the law with respect to those employees and to any other employees to whom the use of at least 30 hours of paid time off under the same conditions are extended.

To remain in compliance, any paid time off, including sick time, used by an employee from July 1 to December 31, 2015, must be job-protected leave subject to the law’s non-retaliation and non-interference provisions. In all other respects, during this transition period, the employer may continue to administer paid time off under policies in place as of May 1, 2015.

On or before January 1, 2016, all employers operating under this safe-harbor provision must adjust their paid-time-off policy to conform with the earned sick time law.

For more information on the new sick leave law, see EY Payroll NewsFlash Vol. 16, #120 (dated May 5, 2015).

Coverage of part-time employees

Further information released on June 10, 2015, clarifies that on and after July 1, 2015, all employees not previously covered by the employer’s paid-sick-leave policy, including part-time employees, new employees and per-diem employees, must either:

- Accrue paid time off at the same rate of accrual as covered full-time employees.
- If the policy provides lump-sum allocations, receive a prorated lump-sum allocation based on the provision of lump-sum paid time off/sick leave to covered full-time employees. Such lump-sum allocations may be computed under either or both of these methods:
  - Where lump sums of paid time off are provided annually, be halved for employees who receive coverage as of July 1, 2015, and proportionately reduced for employees hired after July 1, 2015.
  - Be proportionate for part-time employees

Effective date of full compliance

On or before January 1, 2016, all employers operating under the safe-harbor transitional provision must adjust their paid sick leave policy to conform to the state’s Earned Sick Time Law. Employers with the option to utilize the safe harbor may also choose full compliance with the Earned Sick Time Law and regulations beginning July 1, 2015, for some or all employees.

The Attorney General’s Office has also released the poster that must be displayed at the workplace as of July 1, 2015.

The poster may be downloaded here.

For more information see the attorney general’s website.
State news

Nevada

Law increases “payroll” and other businesses taxes to fund education, governor expected to sign

Recently enacted legislation (SB 483) increases the state’s Modified Business Tax (MBT) and corporate business license fee. The Governor heralded the passage of SB 483 as a “proud day for Nevada,” stating that the law’s education provisions will “transform Nevada for generations to come.”

Background on the MBT

The MBT, also referred to as a “payroll tax” is fully paid by most private employers subject to Nevada unemployment insurance. Exempt organizations and household employers are exempt from this tax, and financial institutions pay more than general businesses.

Although the MBT applies to businesses covered by the state’s unemployment insurance law, it is paid quarterly to the Nevada Department of Taxation and not the Nevada Employment Security Division.

Currently, if the sum of all taxable wages, less health care deductions, paid by the employer does not exceed $85,000 for the calendar quarter, the amount of tax is 0%. If the sum of all the wages paid by the employer, less health care deductions, exceeds $85,000 for the calendar quarter, the tax is 1.17% of the amount of the wages that exceeds $85,000.

For financial institutions, the rate is 2% of all taxable wages less health care deductions.

Effective July 1, 2015, the MBT rate of 1.17% was scheduled to sunset, returning to the lower rate of 0.63% for general businesses (but not financial institutions).

Changes to the MBT under SB 483

Effective July 1, 2015, SB 483 generally makes the following changes to the MBT:

- Mining employers are subject to the same MBT as financial institutions (the law changes the definition of financial institution to exclude insurance companies).
- The MBT is imposed on businesses other than a financial institution or a mining business at the rate of 1.475% of the total wages paid by the business each calendar quarter that exceed $50,000 (down from $85,000).
- A business subject to the new commerce tax is allowed to subtract a credit equal to 50% of the commerce tax paid by the business for the previous year when determining the amount of the MBT due.
- The Department of Taxation is required every other year to determine if a reduction in the MBT rate is warranted based on the combined revenue from the commerce tax and the MBT tax. According to the bill language, it appears that the reduction cannot take the MBT to lower than 1.17%.

The bill also imposes an annual industry-specific commerce tax on each business entity whose Nevada gross revenue in a fiscal year exceeds $4,000,000 and increases the business license fee for corporations.

For more information concerning this legislation, see the replay of our webcast here.
New York

Department of Labor releases draft regulations on use of pay cards

New York Governor Andrew M. Cuomo announced the release of draft regulations that provide strict guidelines for employer use of payroll debit cards. According to the Governor’s statement, an estimated 13,000 businesses in New York State pay approximately 200,000 workers through debit cards. (News release, May 27, 2015.)

“An honest day’s pay for an honest day’s work should never come with an asterisk,” Governor Cuomo said. “These regulations crack down on one of the more underhanded forms of wage theft and will better protect hundreds of thousands of employees who work and live in New York.”

The draft regulations are available here.

Employer restrictions on use of pay cards

Employers are allowed to pay wages to employees by cash, check, direct deposit or payroll debit cards. Employees must give their advance, written and voluntary consent for electronic wage payments via direct deposit or payroll debit card and be able to withdraw their consent at any time. The employer has a reasonable period to implement withdrawals of consent. Employees can be under no threat of adverse action for their refusal to be paid electronically, nor can employers make their participation a condition of hire or continued employment.

Businesses must document employees’ consent and keep it on record for six years.

At least seven business days prior to seeking consent to issue wages by payroll debit card, employers must provide a written statement in the employee’s primary language that contains all of the following:

- A plain-language description of all of the employee’s options for receiving wages
- A statement that the employer may not require employees to accept wages by payroll debit card or direct deposit
- A statement that employees may not be charged any fees for services to access their wages in full
- A list of locations where employees can access and withdraw wages at no charge within reasonable proximity to their place of residence and place of work

Requirements for operating a pay card program

Employers must provide at least one network of automated teller machines that offers withdrawals at no cost to the employee. No cost means that employees can access their wages, in full, without encumbrances, costs, charges or fees.

Employers also must provide at least one method to withdraw up to the total amount of wages for each pay period or balance remaining on the payroll debit card without the employee incurring a fee. Employees must be provided with access to their wages at a facility or machine that is located within a reasonable travel distance to the employee’s work location or home.

The draft regulations provide that the employer must, upon an employee’s request, provide periodic statements and transaction histories to the employee.

The draft regulations also provide a list of items for which an employers or agent may not directly or indirectly charge an employee a fee. The employer may not pass on any of its own costs associated with a payroll debit card account to an employee, nor may an employer receive any kickback or other financial remuneration from the issuer, card sponsor or any third party for delivering wages by payroll debit card.

Funds deposited onto a payroll debit card may not expire; however, the agreement between the employer and the issuer may provide that an account be closed for inactivity provided the card issuer is required to give reasonable notice to the employee and the remaining funds are refunded to the employee within seven days of the account closure.

Employees must be given a written notice of any change to the terms or conditions of the payroll debit card account, including any changes in the itemized list of fees, at least 30 days prior to the change.

Comments may be made within 45 days of May 27, 2015, to Michael Paglia-longa, NYS Department of Labor, Building 12, State Office Campus, Room 509, Albany, NY 12240, or email regulations@labor.ny.gov. No hearing has been scheduled.

Ernst & Young LLP insights

These draft regulations were issued in response to increased media claims since mid-2013 that some companies force their low-income employees to use payroll debit cards that carry substantial fees while they unscrupulously profit by kickbacks from pay card issuers. New York’s Attorney General vowed to investigate the pay card practices of some of the state’s largest employers.

The Consumer Financial Protection Bureau has since issued a bulletin reminding employers that under the Electronic Funds Transfer Act (EFTA) and Regulation E they cannot require their employees to receive wages on a payroll card. The bulletin sets forth the federal consumer protections that apply to payroll cards, such as fee disclosure, access to account history, limited liability for unauthorized use and error resolution rights.

Read our special report on pay cards here.
North Dakota

Revised 2015 income tax withholding tables available; implementation for this year is optional

The North Dakota State Tax Commission has released the revised 2015 Income Tax Withholding, Rates and Instructions for Wages Paid in 2015 that reflect the reduction in personal income tax rates provided for by legislation enacted earlier this year and effective January 1, 2015.

This is the fourth consecutive legislative session that North Dakota has lowered income tax rates.

Employers are given the option of updating their payroll systems for the remainder of the 2015 calendar year to reflect these income tax withholding changes. Employers that choose to implement to these revised withholding rates are encouraged to update their payroll systems as soon as they are able to do so.

The revised 2015 wage-bracket withholding tables are available on the North Dakota State Tax Department website.

The annual percentage method is reproduced below.

Legislative background

As we reported in the June 2015 issue of Payroll Perspectives, the passage of SB 2349 reduced personal income tax rates by 10% and corporate income tax rates by 5% effective for taxable years after December 31, 2014, resulting in $108 million in income tax relief. (SB 2349)

Revised rate applies to supplemental wages

The supplemental rate of income tax withholding for 2015 is revised to 2.05%, down from 2.28%.

Supplemental wages, as defined for federal income tax purposes, are treated as supplemental wages for North Dakota income tax purposes. This includes bonuses, commissions, overtime pay, payments for accumulated sick leave, severance pay, awards, prizes, back pay and any other payment that is considered a supplemental wage for federal income tax withholding purposes. The method for calculating the amount of North Dakota income tax to withhold from supplemental wages is similar to the federal income tax withholding method. The amount of North Dakota income tax to withhold from supplemental wages depends on whether the supplemental wages are identified as a separate payment from regular wages.

If supplemental wages are combined and paid with regular wages, and the amounts of each are not separately identified, calculate the amount of North Dakota income tax to withhold from the combined amount using any of the regular methods allowed (e.g., the percentage method).

If supplemental wages are paid separately from regular wages (or are combined and paid with regular wages but each is separately identified), calculate the amount of North Dakota income tax to withhold using either applicable method below:

(a) For the remainder of 2015, multiply the supplemental wages by 2.05% (0.0205).

(b) Add the supplemental wages to the regular wages for the most recent payroll period. Then calculate a tentative withholding amount on this total amount using any of the regular methods allowed (e.g., the percentage method). From this tentative withholding amount, subtract the amount of North Dakota income tax already withheld (from the regular wages). The result is the amount to withhold from the supplemental wages.
The 2015 annual withholding allowance amount is $4,000.00.

Retroactive income tax withholding adjustments not required

Employers that choose to update their payroll systems for the remainder of the 2015 calendar year are not required to make retroactive adjustments to the North Dakota income tax withholding returns already filed or to employees' paychecks already issued.

Employers are also not required to adjust the amount of North Dakota income tax withholding from future wages paid in 2015 to account for any overwithholding that might have occurred with respect to previously issued paychecks.
Oklahoma

Law changes new employer SUI rate, covered wages and wage levy rules

Under recently enacted legislation (HB 1001) and effective January 1, 2016, the state unemployment insurance (SUI) tax rate assigned to newly liable employers will change from the greater of 1.0% or the average contribution rate paid by all employers to a set rate of 1.5%. The employer will be eligible for an experience rate the calendar year after the employer has been liable for the eight consecutive calendar quarters immediately preceding the calculation of the employer’s contribution rate.

Experience-rated employers that become inactive for one calendar year will revert to the 1.5% new employer rate for the following calendar year.

Note that the new employer rate was 1.0% for 2012 but increased to 2.0% for 2013, 2.4% for 2014 and 2.2% for 2015.

Change in covered wages

Effective November 1, 2015, the new law requires that for Oklahoma state unemployment tax purposes, wages, salaries or draws paid to limited liability company members, relatives of the members and employees must be taxed in the same manner as required by the Federal Unemployment Tax Act (FUTA).

Wage levies

Also effective November 1, 2015, the new law provides that the Oklahoma Employment Security Commission may hold an employer liable for the amount ordered to be withheld from wages under a levy, plus interest and service costs.

Oklahoma legislation allows employers to file a pre-emptive protest of an ex-employee’s claim for UI benefits

Recently enacted legislation will allow Oklahoma employers to pre-emptively protest the receipt of unemployment insurance (UI) benefits by a separated employee, rather than wait for the individual to file a claim for benefits. (HB 1001)

Currently, an employer must wait until a separated employee has filed a claim for benefits, then upon receipt of a “Notice of Unemployment Compensation” file a written protest within 10 days of the date the notice was mailed.

Effective April 30, 2016, an employer will have the option at the time of separation to file a “statement of objection” to any future claim for UI benefits and provide documentation that explains why the individual should be found ineligible for UI benefits. The statement of objection must be filed through the electronic employer portal on the Oklahoma Employment Security Commission’s website and must contain a statement of specific facts and documentation that:

- Discloses the name and Social Security number of the separated employee
- Makes the individual ineligible for UI benefits or disqualifies the individual for UI benefits under Oklahoma unemployment law
Pennsylvania

House passes bill to increase state income tax rate; opposition expected in the Senate

With the strong support of Democrats, House Bill 504 recently passed the Pennsylvania House of Representatives that would increase the state’s income tax rate by 20% from the current 3.07% to 3.7% and the state sales tax from 6% to 7%. The bill also would provide for local school district property tax relief, and as proposed by the Governor, it would not expand the sales tax base. If enacted, the increases would take effect January 1, 2016. The bill is now under consideration by the Republican-controlled Senate, where the Tax Foundation has indicated it is likely to face opposition. (HB 504, passed by the state House of Representatives on May 13, 2015.)

Pennsylvania Governor Tom Wolf in his fiscal year 2016 budget proposal called for a 0.63% increase to the personal income tax rate effective July 1, 2015, and a 0.6% increase to the sales tax rate effective January 1, 2016, to fund property tax relief.

To mitigate the impact of the income tax increase on low-income families, the Governor proposed to increase the eligibility for a poverty exemption to 150% of the poverty line for a family of four. The Governor also proposed to lower the corporate income tax rate from 9.99% to 5.99% effective January 1, 2016, and to 4.99% on January 1, 2018, and implement mandatory combined reporting effective January 1, 2016.

Of interest, the budget proposal also called for an increase in the state minimum wage from $7.25 to $10.10. (2015-16 budget proposal introduced by the Governor on March 3, 2015.)

House and Senate Republicans appear divided on their support of a hike in the state personal income tax rate.

In his press release, House Majority Leader Dave Reed (R) stated that House Bill 504 is “a responsible, balanced approach addressing a problem we have been discussing here in Pennsylvania for decades” and that its property tax and rent rebate program provisions will benefit low- to middle-income senior citizens and disabled residents across the state.

In contrast, Senate President Pro Tempore Joe Scarnati (R) stated in a press release on March 3, 2015, that Senate Republicans, who hold a 30-19 majority in the Senate, will not support the Governor’s enormous tax increases on Pennsylvania families and employers. He also stressed that the proposal to reduce property taxes, while good in concept, is concerning since there is nothing in the proposal to keep property taxes from going back up.

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Remember, benefits charged to the employer’s account will ultimately influence the UI tax rate assigned; therefore, precautionary action, such as the new Oklahoma pre-emptive protest, should be considered in insureing disqualified claims.

Additionally, employers lose their right to protest benefits paid to claimants if they fail to respond within 10 days of the postmark date of the state’s notice concerning a benefit application.

Employers may also lose any right to protest if they fail to provide specific facts concerning the separation. For instance, a protest that says only “discharged due to misconduct” falls short of providing useful information. The state needs to know what caused the separation on that particular day, whether the claimant had received any warnings, and what the claimant should have done that could have prevented the separation.
Puerto Rico

Enacted budget includes personal income tax changes

Puerto Rico enacted Act 72-2015 on May 29, 2015, which includes significant changes to the Puerto Rico Internal Revenue Code of 2011, as amended (2011 PRIRC or the Code), principally modifying the sales and use (SUT) regime, introducing a value-added tax (VAT), and amending other income tax provisions.

Act 72-2015 resulted from House Bill 2482 (HB 2482 or the Bill) and was the final attempt to pass tax legislation necessary to submit a balanced budget for fiscal year 2016, deal with the Puerto Rico Government's fiscal crisis, and create or adopt an integrated tax system.

This summarizes key personal income tax changes under Act 72-2015.

Individual income tax changes under Act 72-2015

The tax rates previously in effect for tax years commencing after December 31, 2012, but before January 1, 2014, are made effective for all tax years after December 31, 2012. Refer to the graduated rates table below. These rates also apply to tax year 2014 because the Government's budgetary, financial and economic metrics required for the scheduled reduction in rates to take place as originally approved under the Code were not achieved.

If the net taxable income is: The tax shall be:

<table>
<thead>
<tr>
<th>Net over $9,000</th>
<th>0%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Over $9,000 but not over $25,000</td>
<td>7% of the excess over $9,000</td>
</tr>
<tr>
<td>Over $25,000 but not over $41,500</td>
<td>$1,120 plus 14% of the excess over $25,000</td>
</tr>
<tr>
<td>Over $41,500 but not over $61,500</td>
<td>$3,430 plus 25% of the excess over $41,500</td>
</tr>
<tr>
<td>Over $61,500</td>
<td>$8,430 plus 33% of the excess over $61,500</td>
</tr>
</tbody>
</table>

The gradual adjustment, which was not in effect for tax years after December 31, 2014, applies again for tax years after December 31, 2014, at a rate of 5% of the excess of net income subject to tax over $500,000. The gradual adjustment continues to be limited to a certain cap amount.

The 2% special tax on self-employed individuals is eliminated for tax years commencing after December 31, 2014.

For tax years commencing after December 31, 2014, only those contributions made to nonprofit entities acknowledged as, and tax-qualified by, the Puerto Rico Secretary will be deductible. Prior to this amendment, donations made to entities qualified by the US IRS were also deductible.

Limitation of capital losses for individuals was relaxed as follows:

<table>
<thead>
<tr>
<th>Current status</th>
<th>Act 72-2015</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tax years ended before January 1, 2015</td>
<td>Tax years ended after December 31, 2014</td>
</tr>
<tr>
<td>Limited to 90% of the gains from the sale or exchange of capital assets, plus the net income of the taxpayer or $1,000, whichever is smaller.</td>
<td>Available to offset capital gains generated during the year. Any excess can be used against the taxpayer's net income or a $1,000 deduction, whichever is lower.</td>
</tr>
</tbody>
</table>

Individuals with net operating losses (NOLs) from their trade or business for three consecutive years may carry over only 50% of the NOL amount.

Moratorium of tax credits

Act 72-2015 modifies the existing tax credit moratorium period for the use of credits granted or purchased, as well as on the issuance of tax credits, by extending the moratorium from tax years commencing before January 1, 2016, to tax years commencing before January 1, 2018. Act 72-2015 also includes certain annual limitations on the issuance of tax credits under certain special laws.

In the case of the moratorium on tax credits subject to the informative return requirement on tax credits issued as of June 30, 2013, Act 72-2015 also extends the moratorium period to tax years commencing on or after January 1, 2018.

The right to use certain tax credits subject to the moratorium, issued during fiscal years 2014–15 through 2017–18, will continue to be subject to a 50% limitation rule as extended by the act.

Interagency portal to be created for improved tax enforcement

A digital tool managed by the Puerto Rico Treasury Department will be created to receive information from various government agencies and used to corroborate transactions as part of the enforcement process for both corporate and individual taxation.

Agencies such as the Department of Transportation, Municipal Revenue Collection Center (CRIM), Commissioner of Financial Institutions and municipalities will be required to submit information to the portal or database, which will be used to cross-check information reported by the taxpayer in its tax returns. Taxpayers will also be required to disclose certain legal transactions, such as purchases or sales of real property, refinancing transactions and wills, with an informative tax return to be made available by the Secretary as pertinent.
Rhode Island

Agreement signed with U.S. Department of Labor to share information on misclassification of employees

On May 7, 2015, the U.S. Department of Labor (DOL) announced that Rhode Island has become the latest state to enter into a memorandum of understanding (MOU) with the agency to share information and coordinate enforcement efforts as they pertain to an employer’s incorrectly treating employees as independent contractors. Rhode Island joins 21 other states that have agreed to share worker misclassification information with the DOL.

Purpose of the federal-state labor department MOU

The focus of this MOU is share information that may be useful in collectively identifying workers who have been denied access to such benefits and protections as family and medical leave, overtime, minimum wage, workers’ compensation insurance, and unemployment insurance.

Also of interest are governmental revenues lost due to the failure to withhold and/or pay Social Security, Medicare, unemployment insurance or other similar employment taxes as a result of the worker misclassification.

Information sharing

To the extent practicable and allowed by law and policy, the U.S. Department of Labor and the respective state agency agree to:

- Exchange information on laws and regulations of common concern to the agencies
- Establish a methodology for exchanging investigative leads, complaints and referrals of possible violations
- Exchange information (statistical data) on the incidence of violations in specific industries and geographic areas

Where appropriate and to the extent allowable under law, the U.S. Department of Labor and the respective state agencies may:

- Conduct joint investigations periodically in the state if opportunity provides
- Coordinate their respective enforcement activities and assist each other with enforcement
- Make referrals of potential violations of each other’s statutes

22 states that now share worker misclassification findings with the U.S. Department of Labor

- Alabama
- California
- Colorado
- Connecticut
- Florida
- Hawaii
- Illinois
- Iowa
- Louisiana
- Maryland
- Massachusetts
- Minnesota
- Missouri
- Montana
- New Hampshire
- New York
- Rhode Island
- Texas
- Utah
- Washington
- Wisconsin
- Wyoming

For more information about the risks of misclassifying workers as independent contractors, read our special report here.
State news

South Carolina

Federal loan repaid, making return of employer FUTA rate to normal likely in 2015

South Carolina Governor Nikki Haley announced that South Carolina repaid its federal unemployment insurance (UI) loan months earlier than expected. As a result of the loan repayment, and if the state doesn’t again borrow from the federal government through November 10, 2015, South Carolina employers will see a net FUTA rate of 0.6% for calendar year 2015. (News release, governor’s office, June 2015.)

“This loan payoff is truly a cause for celebration,” said Governor Haley. “Restoring solvency to the state’s unemployment trust fund is another step in our state becoming debt free and is quantitative proof that our citizens are finding work, businesses are strengthening our workforce and economy, DEW [Department of Employment and Workforce] is cracking down on fraudulent claims and South Carolina is open for business.”

FUTA credit reductions avoided for previous years

Although the state began borrowing in 2008, South Carolina employers only paid higher FUTA taxes for calendar year 2010. For calendar years 2011–14 employers paid at the minimum net FUTA rate, as South Carolina requested and received avoidance of the normal FUTA credit reduction for these years, and requested and received a waiver of the Benefit Cost Rate (BCR) add-on for 2013 and 2014.

The loan, of which its final $120 million was repaid in full on June 11, 2015, hit its highest balance of $977.7 million in March 2011. Early and voluntary payments on the loan by DEW between 2011 and 2015 returned the state’s UI trust fund to solvency, saving businesses more than $12 million in interest payments.

And then there were six

South Carolina’s repayment of its federal UI loan leaves six jurisdictions with remaining balances: California, Connecticut, Indiana, Kentucky, Ohio and the Virgin Islands. Kentucky hopes to pay off its loan before November 10, 2015, allowing Kentucky employers to pay at the minimum net FUTA rate for calendar year 2015, while Connecticut, Indiana and Ohio hope to repay their loans in 2016.

Virginia

Law gives nonresident employers and employees tax-related relief in connection with disaster services

Virginia Governor Terry McAuliffe approved legislation that effective July 1, 2015, exempts out-of-state businesses and their nonresident employees from certain tax and regulatory requirements if they are providing services temporarily within the state in connection with a declared state disaster or emergency. (HB 1386, Ch. 595.)

Virginia joins a number of states, such as Arkansas, Kansas, Oklahoma and Vermont, that this year have provided similar tax relief for temporary nonresident employment connected with disaster and disaster-recovery efforts.

Scope of tax relief available

Qualified out-of-state businesses are exempt from:

- State and local business licensing or registration requirements
- State and local taxes or fees, including without limitation:
  1. Unemployment insurance contributions
  2. State and local occupational licensing fees
  3. State income taxes (including employer withholding requirements)
  4. State and local sales and use
  5. Licensing and regulatory requirements of the state corporation commission

Qualified out-of-state employees are exempt from:

- Filing or paying Virginia income taxes
- Income tax withholding on their wages
- Any other state or local tax or fee, including related state or local employer withholding and remittance obligations, but not including transaction taxes or fees based on purchases, leases or consumption in the state

Services and period covered by the relief

The exemption applies to disaster-related or emergency-related work, which includes repairing, renovating, installing, building or rendering services or other business activities necessary to mitigate damage to critical infrastructure resulting from a declared state disaster or emergency.

The relief is available only for the disaster response period that begins 10 days before the first day of the declared disaster or emergency and ends 60 calendar days after the declared state disaster or emergency or the date authorized by the Governor.
Who is covered?

The legislation extends to businesses and employees as follows:

- **Out-of-state businesses.** A qualified out-of-state business is an entity whose services are requested by a state-registered business or a state or local government entity for purposes of performing disaster or emergency work in the state, and that prior to any declared state disaster or emergency and work related thereto:
  - Has no presence, registrations or tax filings in the state
  - Conducts no business in the state except for disaster or emergency-related work during a disaster response period

An out-of-state business includes a business entity that is affiliated with a registered business in the state solely through common ownership.

- **Out-of-state employees.** A qualified out-of-state employee is an individual who does not work in the state except for providing disaster-related or emergency-related work during a disaster response period.

Notice requirement

Any out-of-state businesses that enter the state shall, upon request, provide to the state tax department a written statement that the business is in the state for purposes of responding to a declared state disaster or emergency. The statement shall include for the out-of-state business:

- Name
- State of domicile
- Principal business address
- Federal Tax Identification Number
- Date of entry into the state
- Contact information

A registered business shall, upon request, provide the state tax department the above information for any out-of-state affiliate that enters the state.

New form available for requesting copies of previously filed withholding or other business tax returns

The Virginia tax department recently adopted a new process for requesting copies of previously filed tax returns. Use Form VA-1 to request copies of business tax returns up to five years old. Only the authorized taxpayer, power of attorney, court-appointed representative or officer of a company may request copies. The request may take up to 30 days to process. The form is available here. (e-Alerts digest, April 2015.)

Virginia otherwise requires income tax withholding on nonresident wages

Employers should be aware that in the normal course of business, Virginia requires income tax withholding on all wages connected with services provided within the state by nonresident employees unless a state or federal exception applies (e.g., certain transportation employees). (Virginia Income Tax Withholding Guide for Employers, rev. July 2014.)

As we previously reported, after failing to pass in 2014, the House (H.R. 2315) and Senate (S.86) have introduced the Mobile Workforce State Income Tax Simplification Act of 2015 to ease the nonresident income tax burden on businesses and taxpayers by exempting employment of 30 or fewer days in a state from nonresident income tax. (See page 14 for more information.)
Federal employment tax due dates for July 2015

<table>
<thead>
<tr>
<th>Due date</th>
<th>Deposit or filing requirement</th>
</tr>
</thead>
<tbody>
<tr>
<td>July 1</td>
<td>Semiweekly deposit due date for liabilities incurred June 24-26</td>
</tr>
<tr>
<td>July 6</td>
<td>Semiweekly deposit due date for liabilities incurred June 27-30</td>
</tr>
<tr>
<td>July 8</td>
<td>Semiweekly deposit due date for liabilities incurred July 1-3</td>
</tr>
<tr>
<td>July 10</td>
<td>Form 4070 is due from employees who received $20 or more in tips in June. Semiweekly deposit due date for liabilities incurred July 4-7</td>
</tr>
<tr>
<td>July 15</td>
<td>If the monthly deposit rule applies, deposit the tax for payments made in June. Semiweekly deposit due date for liabilities incurred July 8-10</td>
</tr>
<tr>
<td>July 17</td>
<td>Semiweekly deposit due date for liabilities incurred July 11-14</td>
</tr>
<tr>
<td>July 22</td>
<td>Semiweekly deposit due date for liabilities incurred July 15-17</td>
</tr>
<tr>
<td>July 24</td>
<td>Semiweekly deposit due date for liabilities incurred July 18-21</td>
</tr>
<tr>
<td>July 29</td>
<td>Semiweekly deposit due date for liabilities incurred July 22-24</td>
</tr>
<tr>
<td>July 31</td>
<td>Form 941 for quarter 2, 2015 is due today (extended deadline of August 10 applies if all taxes were timely paid and in full). Federal unemployment insurance (FUTA) tax liabilities of more than $500 through June 30 are due today. Semiweekly deposit due date for liabilities incurred July 25-28</td>
</tr>
<tr>
<td>August 5</td>
<td>Semiweekly deposit due date for liabilities incurred July 29-31</td>
</tr>
</tbody>
</table>
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