

COMPROMISE PROVISIONS

Below, we summarize the provisions that were incorporated into current legislation to address concerns raised by the state of New York & the Federation of Tax Administrators.

Issue	Prior Legislation	Concern	Current Legislation
Non-resident day threshold	More than 60 days	Day threshold too high (FTA Position: Threshold should be more than 20 days or, alternatively, more than 30 days, unless the individual earned in excess of \$250,000 wages and related remuneration in the prior year, then more than 15 days).	More than 30 days.
Definition of compensation	Wages “paid” to an employee	To avoid altering treatment of deferred compensation, should be wages “earned” by an employee.	Wages “earned” by an employee.
Definition of a nonresident work day	A work day is assigned to a nonresident state when more than 50 percent of that day’s employment duties are conducted in a nonresident state	If a nonresident is in New York for any part of a work day, then the work day should be assigned to New York.	A work day is assigned to a nonresident state (e.g., New York) when any part of the work day is in that nonresident state (but a single day may be assigned only to one nonresident state).

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CONTINUED

Effective date	Effective upon date of enactment	Effective date should be delayed to provide ample time to develop administrative guidance and to minimize fiscal impacts.	Beginning of the 2 nd calendar year following enactment (January 1, 2018, which would thus have no fiscal impact until the final quarter of New York FY19-20).
Clarification of definition of Operating Rules (penalties)	N/A	Employers would not be liable to pay the tax if it was not withheld.	If a tax was owed but not withheld, an employer that should have withheld could be subject to penalties for failure to withhold tax, under certain circumstances.
Application of Operating Rules (review cycle)	N/A	No specific time required for an employee/employer to compare liabilities.	Annual review.
Use of a Time & Attendance System	Not specifically identified	If a system for time & attendance exists, an employer had an option to use or not use.	If a system is designed to track employee time and attendance, it must be used.