Mobile Workforce Briefing Book

Prepared by the Council On State Taxation

for the

Multistate Tax Commission
Income and Franchise Tax Uniformity Subcommittee

September 9, 2009

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Testimony to the Multistate Tax Commission
Income and Franchise Tax Uniformity Subcommittee

September 9, 2009

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Thank you for the opportunity to provide testimony to the Multistate Tax Commission (MTC) on behalf of the American Payroll Association (APA) and the Council On State Taxation (COST) regarding the MTC's project to develop a model mobile workforce statute.

Our first recommendation is to strike the word "withholding" from the project name ("Mobile Workforce Withholding Model Statute"). The MTC has not yet determined whether the statute will be limited to withholding or will also address tax liability. This may seem like a minor issue, but the current project name may lead casual observers to conclude the project is limited to withholding and thus discourage participation. Regardless of the MTC's ultimate determination regarding this issue, the project name should be changed at least until such a determination is made.

The remainder of our testimony is organized to follow the MTC's August 26, 2009 "Policy Checklist" for this project. The MTC's "Policy Checklist" is in italic font and our comments are in regular font.

I. Application of the Rule

A. Should the rule address (1) the employee's responsibility to file (i.e., the state's exercise of jurisdiction), and thus obviate the employer's responsibility to withhold, or (2) the employer's responsibility to withhold, and thus leave open the employee's responsibility to file?

Any model mobile workforce statute must provide for a uniform threshold for both personal income tax liability and employer withholding. A bifurcated system under which personal income tax liability rules differ from employer withholding rules would essentially guarantee employee noncompliance with nonresident personal income tax laws. Without employer withholding, few employees would have the information or ability to comply.

A bifurcated threshold also fails to provide employers with true relief because states would have more incentive than exists today to audit employee payroll due to the fact that, absent withholding, noncompliance is a given. Although a withholding threshold would protect employers from penalties for failure to withhold, employers would still face costly audits by states determined to impose tax on employees who failed to file.

A bifurcated system solves nothing. It does not help employees in any conceivable way. It does not help employers; they would remain subject to the exact same costly audit burdens they face today with the only difference being that penalties for failure to withhold would be diminished. Finally, many employers would choose to ignore the withholding threshold so as to ensure that employees were in compliance with the law; in other words, the employers would feel obligated to their employees to begin withholding as of the first day of travel.

A model mobile workforce statute that addressed only withholding would receive no support from employees or employers and is thus not worth developing.

B. *Should the rule address local, as well as state, income tax withholding?*

In some states there are local income taxes that apply to nonresidents. If this issue is addressed, it should be made an option to ensure that, in those states, local concerns do not preclude adoption of a broader state-level threshold.

C. *Should the rule include a reciprocity provision to encourage enactment?*

The rule should include an option for its adoption on a reciprocal basis. Reciprocal agreements between states regarding the taxation of nonresidents are fairly common. A reciprocity provision would further enactment in some states by reducing any potential negative revenue impact as well as allowing legislators to provide protection to nonresidents only to the extent that their constituents are also protected.

II. *Specifics of the Rule – the threshold:*

A. *Should the threshold be stated in terms of:*
1. *Time?*
    a. *The number of days the employee is present in the state – 10, 30, 60?*
    b. *How should a "day" be calculated?*
        i. *Preponderance of a day or any part of a day?*
        ii. *Include travel time to, away from, and/or through, the state?*
2. *Income?*
    a. *Only income subject to withholding or including income from other sources, such as intangibles and real property?*
    b. *Only such income as is attributable to the state or all such income?*
3. *Some combination of both? (e.g., no requirement to withhold if employee is in the state for less than 10 days AND has/had wage income below $100,000/year)*

The purpose in relying solely on a reasonable time-based (rather than dollar-based) threshold is to eliminate the need for most employees to keep track of their whereabouts for tax purposes. This same purpose holds for employers as well; a reasonable time-based threshold would allow employers to analyze their workforces and provide increased education and compliance tools only to the relatively small number of employees who travel to a nonresident state for a significant period of time.

A dollar threshold nullifies the potential compliance gains from a uniform rule. Dollar thresholds would create greater burdens than exist in most cases under the current patchwork of state laws. Several examples effectively illustrate this point:

1) <u>Employees Don't Know the Exact Amount of Income They Will Earn in a Year</u>

In addition to salary, many employees will earn bonuses, commissions and other perquisites throughout the year. Most of these employees will not know the amount of these payments because they will be based on a variety of unknown factors, such as the economy, business performance and personal performance levels. In addition, employees frequently receive stock commissions, relocation benefits and other benefits (e.g., personal use of a company car) that generate income. These supplemental wage payments are based on factors not related to salary and cannot be estimated prior to the end of the year.

2) <u>It is Difficult to Determine the Amount of Income Earned Per Day</u>

Assuming an employee is able to estimate the amount of income she will earn during the year to assess whether an income threshold is met (which, as noted above, is likely to be inaccurate), she will most likely divide that amount by the number of days worked in the year. Thus, for example, if she estimates an annual salary of $260,000 and that she will work 260 working days in the year, she will calculate that she earns $1,000 a day ($260,000/260) and apply that amount toward the threshold. If, however, during the year she takes an unexpected unpaid leave for 10 days, she will actually earn $1040 a day. If she also takes a two week unpaid vacation, she will again have to recalculate her daily wage, which will change to $1083 a day. What if, due to the extended absences, she worked a few hours on a number of Saturdays throughout the year? Many complications, such as these, would make any calculation extremely difficult.

3) <u>States Have Different Definitions of "Income"</u>

While a "day" is the same everywhere, the concept of "income" is defined differently in every state. A dollar threshold would thus require either a model definition of "income"—which would significantly alter state tax statutes—or employees would be required to research each specific state statute where they expect to travel in order to calculate their earnings on a per day basis.

4) <u>A Dollar Threshold Would Require Employers to Coordinate with Many Third Parties</u>

The proposed dollar threshold will require employers to coordinate their payroll systems with payments made to employees by third parties. Third party payments may include sick or disability payments, supplemental retirement pay, and various types of stock compensation and relocation benefits, all of which may be considered wages to the employee. It will be extremely challenging for employers to track and incorporate these supplemental wages, which are generally paid outside an employer's payroll system, and add that information to the internal payroll information.

5) <u>A Dual Threshold (Day and Dollar) Would Require Creation of Two Tracking Systems</u>

Under a proposal that would have an alternative of a day or dollar threshold, employers would be forced to run two separate systems: one to calculate days in a state, one to calculate dollars earned in a state. This would be extremely complex, costly and burdensome to employers.

When employees travel they do not think in terms of the "dollars" earned while they are away from home but the "days" they are on business travel. For the reasons cited above, a dollar threshold is not simple, would not ease compliance for employees or employers (or state auditors), and it would not be a meaningful or positive change from the current patchwork system.

6) <u>Calculating a "Day"</u>

In determining how a day should be calculated for the purposes of the threshold, it is critical to keep in mind practical compliance issues. The definition of a day must be intuitive for the employee or it is unlikely to be adhered to fully. We suggest a rule such that: 1) if an employee is present performing employment duties within a nonresident state for any part of a day, then it is a "nonresident day" in that state; and 2) if an employee is present performing employment duties in two or more nonresident states during the same day, then it is a "nonresident day" in the nonresident state in which the employee has performed the preponderance of his employment duties for that day. Time spent transiting through a state is disregarded in determining a "day."

B. Exemptions?

1. *Professional entertainers?*
2. *Professional sports teams?*
3. *Certain public figures?*
4. *Others?*

The purpose of exempting certain individuals, such as professional athletes and professional entertainers, from the protections generally afforded by prospective federal legislation is to minimize revenue dislocations among the states. Given their high profiles and public calendars, there is currently a relatively high degree of compliance for these individuals with state nonresident personal income tax laws.

In the context of state—rather than federal—law, however, exemptions for these individuals from the protections generally afforded to nonresident employees should be made optional rather than mandatory. Some states already provide for reciprocal arrangements with regard to the taxation of professional athletes, and those states should not be required by a model statute to alter those arrangements. Identifying these as optional items provides state legislatures with greater flexibility to address political issues that may differ from state to state with regard to these categories of individuals.

As a point of clarification, "professional sports teams" should be "professional athletes." Professional sports teams are employers like any other and their responsibility is solely for withholding; tax liability lies with the employees.

III. Scope of the Rule – beyond the threshold?

A. Should the rule address wage income sourcing? If so,

1. *should the wage income sourcing rule apply only for determining whether the threshold is met, OR*
2. *for determining both whether the threshold is met and where the income is attributable for withholding and personal income tax purposes? If the latter,*
    a. *If an employee is present in a state, but the threshold is not met, should the income that would otherwise be attributed to the state of presence be attributed instead to the state of residence or to the state that is the base of employment?*
    b. *Other issues?*

As discussed above, we do not support an income threshold. Including an income threshold raises numerous difficult or impossible compliance issues for employees, employers and states, as acknowledged by these questions and the questions in item *II*.

B. *Should the rule address issues of evidence?*
   1. *Should the rule specify which records will (or may) be relied upon (employee, employer, or both)?*
   2. *Other?*

One of the primary reasons for uniform rules governing short term work assignments of employees in nonresident states from an employer perspective is the undue expense necessary to create and implement tracking systems for employee activities. We understand that only a very small number of employers—primarily those that bill for work on an hourly basis—have systems in place that readily track an employee's daily whereabouts for purposes of monitoring short term nonresident employment duties. Accordingly, we support a rule that would enable employers to rely on the employees' records of these short term assignments. Such a rule would provide a standard and simple benchmark for compliance that employees and employers could implement and rely upon, and we do not believe that these fair standards would invite illicit collusion between employees and employers. To the contrary, most employers want their employees to be in full compliance with the law, including state tax laws, when they are traveling on company business. The State of New York currently provides such a rule, with an accompanying form.

With regard to this issue, it is critical to be mindful that any reliance rule would merely protect employers from the assessment of penalties upon audit for failure to withhold. Such a rule would in no way affect an employee's tax liability. If an employee represented to an employer that the employee would be in a jurisdiction for less than the threshold period, but in fact the employee exceeded that period, then the employee would be fully liable for any taxes due, just as is the case under current law.

C. *Should the rule address (or explicitly state that it does not address) issues of employer nexus for either withholding or any other business tax?*

Given that this rule is limited to providing a safe harbor for certain nonresidents with regard to personal income taxation and withholding for such taxes, it is unclear to us how the rule relates to employer nexus for withholding or business activity taxes.

* * * * *

About the APA

The American Payroll Association is a non-profit association of over 23,000 payroll professionals, most of whom are responsible for the payroll of approximately 17,000 employers throughout 50 states, the District of Columbia, and U.S. territories. Our membership also includes representatives of large, medium, and small payroll service providers, who in turn process payrolls for an additional 1.5 million employers, representing an aggregate total of one-third of the private-sector workforce. The employers for whom APA members process payrolls are diverse in size and industry.

As payroll specialists, APA's members must issue correct and timely pay; calculate proper tax withholding; remit taxes to federal, state, and local agencies; and file accurate tax and information returns (Forms W-2).

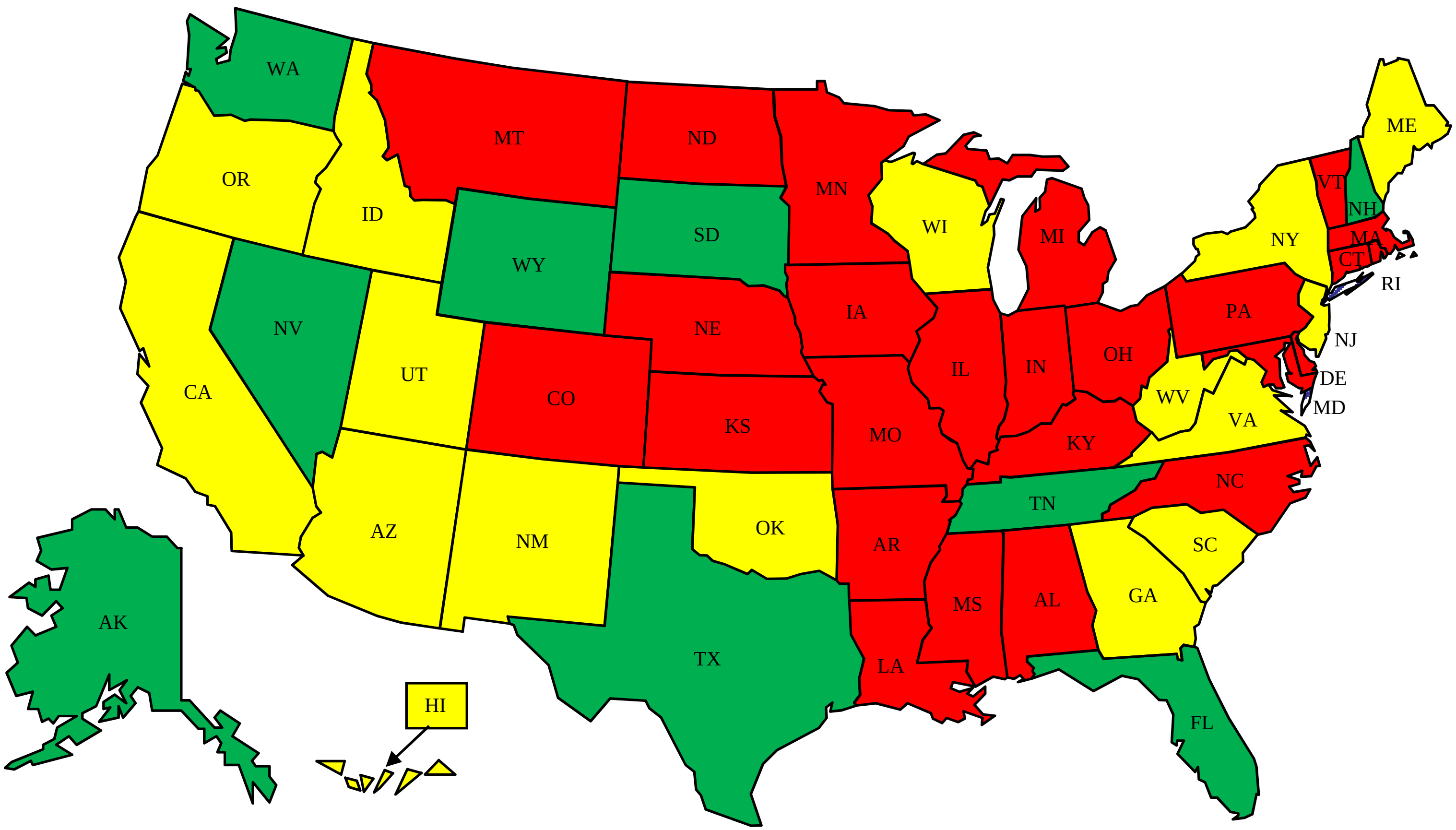
APA’s central mission is to educate its members and the entire payroll industry about the best practices in paying America’s workers their wages while successfully complying with all federal, state, and local immigration, employment, wage payment, tax withholding, child support enforcement, and information reporting laws. It achieves this mission through a variety of educational opportunities, including professional certification, print and online news publications, reference books and materials, and national, regional, and local seminars and conferences.

APA’s secondary mission is to work with legislative and executive branches of all levels of government to find effective ways for employers to meet their compliance obligations and support various government objectives while minimizing administrative burden for government, employers, and individual workers/taxpayers.

About COST

COST is a nonprofit trade association based in Washington, DC. COST was formed in 1969 as an advisory committee to the Council of State Chambers of Commerce and today has an independent membership of 600 major corporations engaged in interstate and international business. COST’s objective is to preserve and promote the equitable and nondiscriminatory state and local taxation of multijurisdictional business entities.

Nonresident Personal Income Tax Withholding



<u>Key</u>

- Nonresident employees subject to tax withholding on *first day* of travel
- Nonresident employees subject to tax withholding after reaching threshold (see Appendix A for details)
- No general personal income tax (or, in the case of Washington, DC, no tax on nonresidents)

— Appendix A —

Withholding Thresholds—More than half of the states that have a personal income tax require employers to withhold tax from a nonresident employee's wages beginning with the *first day* the nonresident employee travels to the state for business purposes. Some personal income tax states (identified on the map with a yellow background) provide for a threshold before requiring tax withholding for nonresident employees. The following chart details these withholding thresholds. Please note that this chart covers *withholding* only; many of these states have a different (and usually lower) standard for imposing tax on nonresidents (*i.e.*, the employee may owe tax even where the employer is not required to withhold tax).

State	No Withholding Required If Nonresident…
Arizona	is in the state for 60 or fewer days in a calendar year
California	earns in-state wages equal to or below "Low Income Exemption Table"
Georgia	is in the state for 23 or fewer days in a calendar year or if less than $5,000 or 5% of total income is attributable to Georgia
Hawaii	is in the state for 60 or fewer days in a calendar year
Idaho	earns in-state wages less than $1,000 in a calendar year
Maine	is in the state for 10 or fewer days in a calendar year
New Jersey	earns in-state wages less than the employee's personal exemption in a calendar year
New Mexico	is in the state for 15 or fewer days in a calendar year
New York	is in the state for 14 or fewer days in a calendar year
Oklahoma	earns in-state wages less than $300 in a calendar quarter
Oregon	earns in-state wages less than the employee's standard deduction
South Carolina	earns in-state wages less than $800 in a calendar year
Utah	*employer* does business in the state for 60 of fewer days in a calendar year
Virginia	earns in-state wages less than the employee's personal exemptions and standard deduction or, if elected by the employee, the employee's filing threshold
West Virginia	earns in-state wages less than the employee's personal exemptions
Wisconsin	earns in-state wages less than $1,500 in a calendar year

Reciprocal Agreements—In addition to the thresholds shown above, many states have reciprocal agreements with neighboring states that provide that taxes are paid in (and withheld for) the resident state only. For example, a resident of Virginia who works in Maryland is subject to tax only in Virginia. The converse also applies. In most states with reciprocal agreements, a "certificate of nonresidence" must be filed either with the employer or the nonresident state. A full list of state reciprocal agreements is beyond the scope of this document.

Employer Experiences with Nonresident Personal Income Tax Withholding

The Council On State Taxation (COST) and the American Payroll Association (APA) asked their members to provide insight into the effect that existing disparate state laws regarding taxation of nonresidents has on them. The following stories were provided to COST and the APA.

While it is the intention of employers to comply with federal, state and local laws some of these laws are very difficult to manage. One in particular is the multi-state taxation of employees. In most cases employees work primarily in one state and will occasionally make trips to other states to conduct business or attend conferences. Many states have laws that require employers to withhold for the state they are visiting if certain requirements are met. The problem in meeting these requirements are as follows:

- States have different requirements that make compliance difficult for employers.
- Payroll systems are not built to allow withholding in multiple locations during the pay period. Therefore, compliance is a time-consuming manual process.
- Collecting the data from the employee is very difficult. Payroll systems are not tied into travel systems to capture when an employee is in a state that requires withholding and reporting.

Due to the fact that the data is difficult to collect and report most employers are not compliant in this area. In order to become compliant for each state it would require an employer to add up to two or three dedicated employees to do this tracking manually. This could add a cost of approximately $150,000 each year to the payroll department budget. H.R. 3359 would provide consistency for reporting and withholding in states. It would minimize the number of employees that we would have to track and it also would reduce the number of manual transactions that the payroll department would have to make to the employee record.

We employ roughly 600 employees in 46 states. We have several customer service centers throughout the United States that most of our employees work out of and we have some resident technicians who live in remote locations that work out of their homes. We have about 12 employees total that travel out of their state on an occasional basis to work a job. I spend roughly three hours every other week hand figuring out-of-state/city taxes on some employees as our payroll system isn't designed to tax two different states or taxing authorities on the same paycheck. Some of these employees may only pay in $30 to $100 a year into a different taxing authority and they hate having to file tax returns at year end for just that little amount in a different state/city. In general, it's just a pain in the neck. I'm guessing there is no getting around this without some kind of national standard.

We have about 200 stores with about 6000 active employees with a 40%+ turnover ratio throughout various states. We have locations in more than 30 states. We have a traveling team that travels state-to-state to prepare for stores opening, which means that technically they should be taxed in each state they work in. We attempt to comply with the various states' laws, but it is nearly impossible. We sometimes have to issue W-2c as we may have taxed the employee incorrectly. A national standard would allow my team to spend their time in other areas that may be overlooked now.

A State audited my employer and analyzed the W-2 of every employee. For every employee that had some withholding in the State (over 1,000), the State assessed tax as if the employees were in the State every day. This shifted the burden of proof to my employer and required my employer to explain, for each employee, why our withholding for the State was correctly less than 100%. Reasons for less than 100% withholding for the State include:

- Employee moves into or out of the State mid-year.
- Employee had a long-term temporary assignment in another state or country.
- Employee completed paperwork to allocate wages as prescribed by the State.
- Supplemental tax rate change occurred mid-year in the State. Auditors used the highest rate for entire year instead of the rate in effect at the time of payment.
- Imputed income added at the end of the year related to personal use of company provided vehicles and/or inclusion of income for group term life insurance in excess of annual limitations are not subject to withholding in the State.

Nevertheless, the State threatened and carried through on its assessment of penalties claiming that my employer "should have known" that some of its employees (less than 1%) traveled for more than a few weeks into the State because my employer reimbursed their expenses for trips into the State. In reality, expense reporting systems are not linked to payroll systems and the fact that travel expenses are reimbursed does not automatically mean that the payroll department is aware of travel to the State.

I have no idea what the cost of full compliance is because we can't fully comply with current laws. The vast majority of our employees who travel are exempt, so they don't complete timesheets. Consequently, we have no way of knowing how many hours they worked in which state and when those hours were worked. We can, however, keep track of employees who spend at least a couple of months in one state because those employees require the exclusive use of one of the offices in our branches. This kind of arrangement, though, is extremely unusual. In the past six years, we have had only one employee who worked in another branch for more than a couple of months. We have 250 exempt employees and 270 non-exempt employees. We have offices in four states.

My employer operates in 50 states, internationally and in over 200 local jurisdictions. Each state, country and locality has in which it operates has different withholding thresholds and rules. My company has over 100,000 employees. The administrative burden of tracking and complying with every jurisdiction is already cost prohibitive and it would cost at least $5 million in additional internal and external costs to devise and implement a system that could adhere to each and every rule. Additionally, the net result of all of this effort is often as little as $1,000 being remitted to a nonresident jurisdiction. My employer does remit withholding on all resident employees in every jurisdiction. The additional burden stems from the multitude and variety of rules at the state level especially in states with thresholds as low as 14 days.

My employer has devoted 1200 hours and $115,000 managing withholding for nonresidents on just a quarterly basis. We have many disgusted employees as well. Here are the issues for my employer:

- Payroll systems do not have the capability to effectively manage multiple work locations.
- Accurate and systemic recording of travel to nonresident states does not exist. The employer can't tell from travel logs what time of day employees leave to or from a nonresident state to determine if that is a day worked.
- Employees are very confused regarding their responsibilities to nonresident states.
- Employees' accountants have been confused on how to complete nonresident forms and how to take credit on their resident state returns.

My employer has 250 employees in 3 states. Even though we are a small employer there are difficulties with the various state rules. Not all payroll systems are capable of tracking employees working in more than one state. Ours would have to have an upgrade that allows "at will" change of state. At this time we would have to set up an additional pay code for each state and manually enter the time. I am a one person full charge payroll office and am responsible for non payroll duties as well. I have no idea what the cost ramifications would be of full compliance with current law. I do know that there would be extensive time involved if this had to be done manually and would possibly require additional personnel. I'm assuming that the offices would actually be able to get the information back to the payroll department in a timely manor, which is a big assumption.

Compliance with state regulations regarding employees who travel and work in multiple states requires an enormous amount of administrative paperwork. My company employs 2000 people in 6 different states. A small percentage of those employees are required to travel to and from these facilities and most often for a few days at a time. They must maintain travel logs and report the information to payroll so the applicable state laws can be manually applied.

27th Annual

CONGRESS

Cruise to Compliance

An Introduction to Multi-State Taxation (Double Session)

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Scott Mezistrano represents payroll professionals before the U.S. Congress, the Internal Revenue Service, the Social Security Administration, and the Department of Homeland Security. His goal is to minimize administrative burden for employers while supporting government initiatives.

Recent successes include convincing the Senate Finance and House Ways and Means Committees to deliver 2009 stimulus funds to taxpayers by changing the income tax withholding tables (as opposed to other, more burdensome ideas being considered); persuading the IRS not to treat a choice of pay schedule by employees of educational institutions as nonqualified deferred compensation; getting the IRS to add a warning to employees on Form W-4 that they may not request withholding as only a flat amount or percentage; and persuading DHS to clarify that an employer may choose to implement E-Verify at select work locations (as opposed to "all or none").

Issues he is currently working on include lobbying for a bill that would exempt employees from the taxes of states and localities in which they are only temporarily working; urging the IRS to develop a separate Form W-4 for nonresident aliens; and petitioning the IRS for improvements to proposed regulations on cafeteria plans.

In addition, Scott coordinates the work of APA members who serve on the Government Affairs Task Force and who represent the APA on IRS advisory committees.

He has testified on behalf of payroll professionals at hearings conducted by the U.S. Department of the Treasury, has served on the IRS's Information Reporting Program Advisory Committee, and has received the IRS's "Excellence in Partnering" award.

Scott is an instructor for two of the APA's most popular training seminars, *Preparing for Year-End* and *Payroll Issues for Multi-State Employers*, and he writes for APA publications. He has been quoted in *The Wall Street Journal*, *Forbes Magazine*, *The Washington Post*, *CNN Money, Congressional Quarterly, USA Today*, and numerous payroll and tax trade publications, and he has been interviewed on television for National Payroll Week.

Since entering the payroll profession in 1986, Scott has served as the payroll manager for companies as large as 30,000 employees spread over 30 states. Before joining the APA in 1997, he was an editor for the *Payroll Administration Guide* and *Payroll Library on CD*, published by BNA. He has held the Certified Payroll Professional designation since 1990. He also holds a B.A. in business administration from the University of Washington.

Emily Rook, CPP

Consultant

Circle Financial Services

Emily Rook is a consultant specializing in employment taxes and payroll systems. She works with clients on projects that include payroll system and payroll process analysis and reviews, payroll system conversions, creation of policy and procedure manuals, reconciliations and corrections to federal, state, and local tax filings, independent contractor reviews, tax compliance reviews, and outsourcing of payroll tax management.

Emily has over 30 years of experience dealing with payroll, payroll taxes, and payroll accounting, including managing the payroll production, payroll tax filing compliance, and payroll accounting for a large multi-entity, multi-state company with over 10,000 employees.

Currently serving as Immediate Past President of the American Payroll Association, Emily is also a member of the APA's Government Affairs Task Force and National Speakers Bureau. At the local level, she is a member of the APA's Chicago Chapter. She has served as Chapter President, Vice President, Secretary, and Government Liaison Officer. She has also been an instructor for the chapter's Fundamental Payroll Certification (FPC) and Certified Payroll Professional (CPP) review classes, and has taught the Payroll Professional Learning Series at DePaul University. She received the Chicago Chapter's Meritorious Service Award in 1998, and the APA's Meritorious Service Award in 1999.

Emily holds a B.S. in Business Administration from Rider University in Lawrenceville, NJ.

An Introduction to Multi-State Taxation (Double Session)

MULTI-STATE INCOME TAXATION: FOR WHICH STATE MUST YOU WITHHOLD?

If your company has operations in more than one state, you may be faced with income tax withholding for more than one state. Sometimes, you may even have to withhold income tax for more than one state from the same employee. Withholding can get even more complicated when you have employees who live in a different state than the one they work in or who perform services in more than one state.

Deciding which state's income tax to withhold can be a confusing process. How do you determine who is a resident and whether you should follow the laws of the state of residence or the laws of the state in which services are performed? Not all states answer these basic questions in the same way and, sometimes, state laws conflict. Even the simple word "operations," as used in the paragraph above, is more complex than you might think.

FROM A BASIC RULE OF THUMB TO THREE RULES

The default rule of state income tax withholding that can be used as a starting point is to withhold income tax for the state in which services are performed. It can be applied in most situations in which the employee lives and works in the same state (assuming it is not one of the nine states without income tax withholding: Alaska, Florida, Nevada, New Hampshire, South Dakota, Tennessee, Texas, Washington, and Wyoming).

However, up to three other withholding rules may have to be considered when the situation is not as straightforward. For example, an employee who lives and works in one state may still be a resident of some other state; that's where withholding Rule No. 1 comes into play. In this scenario, the employee may have income tax liability for the state of residency, and, if you have operations in that state and meet certain other criteria, you may be required to withhold for that other state. On the next level, if an employee lives in one state and works in another, each state's laws of reciprocity (withholding Rule No. 2) and resident/nonresident taxation policies (withholding Rule No. 3) must be examined.

NEXUS: BUSINESS CONNECTION

The word "nexus" literally means "connection." Nexus is established by having a business presence in a state. An office, store, or factory will create nexus, as will the mere entry of an employee into a state to make a sale or perform a service call.

In the withholding context, the employer's concern is whether it has a business connection, or any operations, within a state. If it does, it is subject to the withholding laws of that state. This will make the difference in whether an employer has to withhold income tax for an employee's state of residence even though he or she performs no services there.

If an employer does not have nexus with an employee's state of residence, but there is a reciprocal agreement between the two states, then the employer must honor the reciprocity agreement and not withhold income tax for the state where the employee works. However, the employer is not obligated to withhold income tax for the state where the employee lives because the employer does not have nexus with the resident state (the employee will have to make estimated payments).

If an employer does not have nexus in a state for which one of its employees will have a personal income tax liability, it can choose to establish a withholding account in that state and begin withholding as a courtesy to its employees. However, the payroll department should check with the corporate tax and legal departments of the company first because once you voluntarily register for one tax, you may receive inquiries from the state about other taxes for which you are not liable, such as sales tax or corporate income tax. Also, in some states, withholding and paying over taxes may thereby establish nexus, making your company open to being sued in the courts of that state.

WITHHOLDING RULE NO. 1: RESIDENT DEFINED

The very first determination that must be made is the state of residence of the employee. This is primary because a resident of a state is subject to the laws of that state, including its income tax laws. Furthermore, states have varying policies on withholding from residents who perform services in another state and from nonresidents who perform services within the state. To locate and apply the policies correctly, you'll need to know which state(s) can claim the employee as a resident.

Employees commonly claim that they are a resident of their "home" state. If the employee has relocated to work for you, he/she may assert that the former state is his/her state of residence because he/she still has a home and family there (and doesn't want to complete personal income tax returns for two states). An employee who works for you only during the nine months of the school year, for example, might try to claim that she is a resident of the state she grew up in but in which she now spends only three months of the year. This may be especially likely if her home state doesn't have an income tax.

It's up to you to locate and follow the rules of the appropriate state. Most states have a two-pronged definition of residency, outlining that someone will be a resident by either:

- being domiciled in the state, or
- spending more than a certain number of days in the state.

The term "domicile" usually means the place where an individual has a true, fixed, permanent home and principal establishment, and it usually means the place to which the individual intends to return. Common indicators that an individual is domiciled in a particular location include:

- property ownership,
- bank accounts,
- driver's license and vehicle registration,
- voting registration,
- presence of family, and
- club and church memberships.

WHO IS A RESIDENT?

STATE DEFINITIONS OF A RESIDENT FOR INCOME TAX WITHHOLDING	
State	**Definition**
Alabama	A person who has a permanent place of abode or who is domiciled in the state and spends more than 7 months a year in the state.
Alaska	Not applicable.
Arizona	A person domiciled or who spends more than 9 months a year in the state, unless there for a temporary or transitory purpose.
Arkansas	A person domiciled or who maintains a residence and spends 6 months a year in the state.
California	A person domiciled in the state or in the state for other than a temporary or transitory purpose (Franchise Tax Board Publication 1031 explains "temporary or transitory"). A person working on a contractual foreign assignment and in California for no more than 45 days in any consecutive 18-month period is not a resident.
Colorado	A person who maintains a permanent place of abode or who is domiciled in the state and spends at least 6 months of the year in the state.
Connecticut	A person who is domiciled or has a permanent place of abode and spends more than 183 days of the year in the state. Excludes certain individuals domiciled in the state but present in a foreign country for at least 450 days during any period of 548 consecutive days.
Delaware	A person who is domiciled, maintains a permanent place of abode, and spends more than 183 days of the year in the state. A person who is in a foreign country for at least 495 full days in any consecutive 18-month period, is not present in Delaware for more than 45 days during that period, and does not have a permanent place of abode in Delaware where a spouse, children or parents are present for more than 45 days during that period, is not a resident.
Dist. of Col.	A person who is domiciled in D.C., or who has a place of abode in D.C. for 183 days or more during the year.
Florida	Not applicable.
Georgia	Anyone who is a legal resident on income tax day, resides in the state on a regular basis (not temporary or transitory), or resided in the state for 183 days of the immediately preceding 365 days.
Hawaii	Any person domiciled or residing in the state; to "reside" in the state means to be in the state for other than a temporary or transitory purpose and for more than 200 days of the year.
Idaho	A person who is domiciled or maintains a place of abode in Idaho for the entire year and spends more than 270 days of the year in Idaho.
Illinois	A person who is in Illinois for other than a temporary or transitory purpose, or who is domiciled in Illinois but absent for a temporary or transitory purpose during the year.
Indiana	Anyone who resides in Indiana for the entire year, or has a permanent place of abode in Indiana and spends more than 183 days of the year in the state.
Iowa	A person domiciled in or who maintains a permanent place of abode in the state.
Kansas	A person domiciled in or who spends more than 6 months of the year in the state.
Kentucky	A person who is domiciled, maintains a permanent place of abode, and spends more than 183 days of the year in the state.
Louisiana	Anyone who is domiciled, maintains a permanent place of abode, or spends more than 6 months of the year in the state.
Maine	A person who is domiciled, maintains a permanent place of abode, and spends more than 183 days of the year in the state.

STATE DEFINITIONS OF A RESIDENT FOR INCOME TAX WITHHOLDING	
State	**Definition**
Maryland	A person who is domiciled in Maryland on the last day of the year, or has a place of abode in Maryland for more than 6 months of the year regardless of domicile.
Massachusetts	A person who is domiciled in the state, or who maintains a permanent place of abode and spends more than 183 days of the year in the state.
Michigan	A person who lives in the state at least 183 days of the tax year (or more than half the days for a tax year of less than 12 months).
Minnesota	A person who is domiciled in or who maintains a place of abode in the state and spends more than one-half of the year in the state.
Mississippi	A person who is domiciled or who has a residence in the state.
Missouri	A person who is domiciled or who has a permanent place of abode in Missouri and spends more than 183 days of the year in the state.
Montana	A person who has a domicile or who maintains a permanent place of abode within the state and is temporarily absent but has not established a permanent residence elsewhere.
Nebraska	A person who is domiciled in or who has a permanent home in Nebraska and spends more than 6 months of the year in the state.
Nevada	Not applicable.
New Hampshire	Not applicable.
New Jersey	Any person domiciled in the state for the full year or who has a permanent home in the state and spends more than 183 days of the year in the state.
New Mexico	An individual domiciled in New Mexico during all of the tax year, or an individual who is physically present in New Mexico for a total of 185 days or more in the aggregate during the tax year, regardless of domicile (i.e., the place where an individual has a true, fixed, permanent home); an individual domiciled in New Mexico who is physically present in New Mexico for fewer than 185 days and moves out-of-state with the intention of living outside of New Mexico permanently is not a resident for the period after the change of domicile.
New York	A resident is an individual: (A) who is domiciled in NYS, unless: (1) the person does not have a permanent place of abode in New York State, has a permanent abode elsewhere, and spends no more than 30 days of the year in the state; or (2) is in a foreign country or countries for at least 450 out of 548 consecutive days (approximately 15 out of 18 months), is not in New York State for more than 90 days during the 548-day period, does not have a permanent residence in the state where a spouse or children live for more than 90 days during the 548 day period, and during a period of less than 12 months, is present in the state for a number of days not exceeding the number bearing the same ratio to 90 as the less-than-12-month period bears to 548 days; or (B) who is not domiciled in the state but has a permanent place of abode in the state for substantially all of the tax year (interpreted as more than 11 months) and spends in the aggregate more than 183 days of the tax year in the state, unless the individual is in active military service.
North Carolina	A person domiciled in the state during any part of the year or who resides in the state for other than a temporary or transitory purpose. A person living in the state for more than 183 days of the tax year is presumed to be a resident.
North Dakota	A person domiciled, or who maintains a permanent place of abode within the state and spends more than 7 months of the year in the state.
Ohio	A person domiciled in or who maintains a permanent place of abode in the state.
Oklahoma	A person who maintains a permanent place of abode, or is domiciled in the state and spends more than 7 months of the year in the state.
Oregon	A person domiciled in Oregon or who maintains a permanent place of abode in Oregon and spends more than 200 days of the year in the state.

STATE DEFINITIONS OF A RESIDENT FOR INCOME TAX WITHHOLDING	
State	**Definition**
Pennsylvania	A person who is domiciled in the state (unless a permanent place of abode is maintained elsewhere and no more than 30 of the year days are spent in the state) or who has a permanent place of abode in the state and spends more than 183 days of the year in the state.
Rhode Island	A person who is domiciled in or who maintains a permanent place of abode in the state and spends more than 183 days of the year in the state.
South Carolina	A person domiciled in the state.
South Dakota	Not applicable.
Tennessee	Not applicable.
Texas	Not applicable.
Utah	A person who is domiciled in or who maintains a permanent place of abode in Utah and spends more than 183 days of the year in the state.
Vermont	A person who is domiciled or who maintains a permanent place of abode in Vermont and spends more than 183 days of the year in the state.
Virginia	A person who is domiciled or who maintains a permanent place of abode in Virginia and spends more than 183 days of the year in the state.
Washington	Not applicable.
West Virginia	A person who is domiciled (unless he/she has a permanent place of abode elsewhere and spends no more than 30 days of the year in the state) or who maintains a permanent place of abode and spends more than 183 days of the year in the state.
Wisconsin	A person who is domiciled in the state or in the state for other than a temporary or transitory purpose.
Wyoming	Not applicable.

WITHHOLDING RULE NO. 2: RECIPROCITY

If an employee performs services in a state other than the state of residence, you must find out whether the two states have a reciprocal agreement. A reciprocal agreement allows you to withhold only for the state of residence, as opposed to the state in which services are performed. (This is an example of why the rule of thumb is only a starting point.) Accordingly, you would report wages only to the state of residence when completing Boxes 16-17 (state wages) of federal Form W-2, *Wage and Tax Statement.* In most cases, the employee will be required to submit a certificate of non-residence for the state in which he/she works before you can honor the reciprocal agreement.

The general purpose of reciprocity is to make things administratively easier for the employee and employer. The employee will have to file only one state personal income tax return, and the employer will withhold only for the state in which the employee lives. This is especially helpful if you have an employee who performs services in two or more states that have reciprocity with the state of residence. For example, for an employee who lives in Kentucky, works in Kentucky, Illinois, and Indiana, and submits certificates of non-residence for Illinois and Indiana, the employer will need to withhold only Kentucky income taxes because the three jurisdictions have reciprocal agreements with each other. Without reciprocity, the employer would have to withhold for all three jurisdictions based on the time worked in each one. On the other hand, the presence of a reciprocal agreement requires you to change the state of withholding and reporting if the employee moves his/her residence from one state to another, even though there has been no change in the state in which the services are performed.

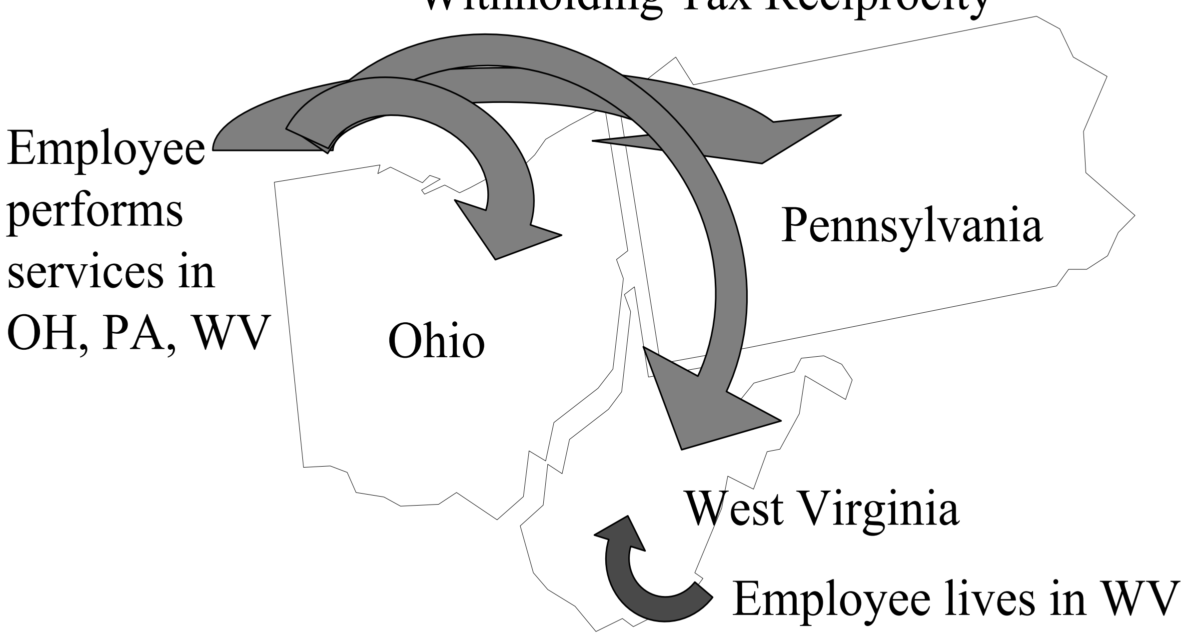
RECIPROCAL COVERAGE

RECIPROCAL WITHHOLDING AGREEMENTS BETWEEN STATES	
State	**Reciprocal Agreements**
Alabama	None
Alaska	Not applicable.
Arizona	None, but a nonresident who performs services in Arizona for an Arizona employer may be exempt from withholding if: (1) the employee is a resident of California, District of Columbia, Indiana, Oregon, or Virginia; and (2) the employee can claim a personal income tax credit for income taxes paid to his/her state of residence. Arizona residents receive the same treatment from those states if they perform services there.
Arkansas	Border city exemption for residents of Texarkana, which is located on the border of Texas and Arkansas. Residents of Texarkana, Arkansas are exempt from Arkansas state income tax and withholding. Residents of Texarkana, Texas are exempt from Arkansas income tax for wages earned in Texarkana, Arkansas. Agreement does not apply to residents of other cities or other Texas residents working in other parts of Arkansas. Employer must supply Form AR-4EC (TX), *Texarkana Employee's Withholding Exemption Certificate.* Employer copy filed with Form AR-3Q-TEX.
California	None
Colorado	None
Connecticut	None
Delaware	None
Dist. of Col.	A reciprocal agreement is in effect with Maryland and Virginia. Nonresident employees of DC are not subject to DC withholding and must file Form D-4A, *Certificate of Non-Residence in the District of Columbia.*
Florida	Not applicable.
Georgia	None
Hawaii	None
Idaho	None
Illinois	Residents of Iowa, Kentucky, Michigan, and Wisconsin are not subject to Illinois income tax withholding for wages earned in Illinois if Form IL-W-5-NR, *Employee's Statement of Nonresidence in Illinois,* is filed with the employer; likewise, Illinois employees working in any of those states will not be taxed there. The reciprocal agreement with Indiana expired at the end of 1997.
Indiana	Residents of Kentucky, Michigan, Ohio, Pennsylvania, and Wisconsin are exempt from Indiana income tax withholding (likewise, Indiana residents working in any of those states will be exempt there). They should complete Form WH-47, *Certificate of Residence.* The reciprocity is not applicable to county income taxes. The reciprocal agreement with Illinois expired at the end of 1997.
Iowa	Residents of Illinois have Illinois state tax withheld only if Form 44-016, *Employee's Statement of Nonresidence in Iowa*, is filed with the employer.
Kansas	None
Kentucky	Residents of Illinois, Indiana, Michigan, Ohio, West Virginia, and Wisconsin have only their resident state tax withheld if Form 42A809, *Certificate of Nonresidence*, is filed with the employer. Daily commuters between Kentucky and Virginia are provided reciprocal benefits.
Louisiana	None

RECIPROCAL WITHHOLDING AGREEMENTS BETWEEN STATES	
State	**Reciprocal Agreements**
Maine	None
Maryland	No Maryland tax is withheld from employees who commute daily to Maryland and reside in the District of Columbia, Pennsylvania, Virginia, and West Virginia. A certificate of nonresidence (Form MW 507, *Employee Exemption Certificate*) must be filed with the employer.
Massachusetts	None
Michigan	Michigan employers do not withhold Michigan state income tax from residents of Illinois, Indiana, Kentucky, Minnesota, Ohio, and Wisconsin. Michigan employees must file certificates of nonresidence to be exempt from withholding. A form is not provided.
Minnesota	Residents of Michigan, North Dakota, and Wisconsin are exempt from Minnesota withholding. Form MW-R, *Reciprocity Exemption from Minnesota Withholding, Affidavit of Residency*, is required to certify residency.
Mississippi	None
Missouri	None
Montana	Montana employers are not required to withhold Montana income tax from residents of North Dakota. A certificate of North Dakota residency is required (Form NR-2, *Employee Certificate of North Dakota Residence*).
Nebraska	None
Nevada	Not applicable.
New Hampshire	Not applicable.
New Jersey	Pennsylvania residents filling out a certificate of nonresidence (Form NJ-165, *Employee's Certificate of Non-Residence in New Jersey*) are not subject to New Jersey withholding.
New Mexico	None
New York	None
North Carolina	None
North Dakota	Residents of Minnesota and Montana working in North Dakota are not required to have North Dakota tax withheld. Form NDW-R, *Affidavit of Residency*, should be filed with their employer annually.
Ohio	Ohio has reciprocal agreements with Indiana, Kentucky, Michigan, Pennsylvania, and West Virginia. Form IT-4 NR, *Employee's Statement of Residency in a Reciprocity State*, must be filed with the employer to claim the exemption.
Oklahoma	None
Oregon	None
Pennsylvania	Pennsylvania has reciprocal agreements with Indiana, Maryland, New Jersey, Ohio, Virginia, and West Virginia. Form REV-420, *Employee's Statement of Nonresidence in Pennsylvania and Authorization to Withhold Other State's Income Tax*, must be filed with the employer. For New Jersey residents who work in Pennsylvania, the amount of any Pennsylvania local income tax withholding reduces the amount of New Jersey income tax to be withheld from those same wages.
Rhode Island	None
South Carolina	None
South Dakota	Not applicable.
Tennessee	Not applicable.

RECIPROCAL WITHHOLDING AGREEMENTS BETWEEN STATES	
State	**Reciprocal Agreements**
Texas	Not applicable.
Utah	None
Vermont	None
Virginia	Full reciprocal agreement with West Virginia but a certificate of nonresidence in Virginia must be filed. Daily commuters from District of Columbia, Kentucky, and Maryland filing a certificate of nonresidence are exempt from Virginia tax. Pennsylvania and West Virginia residents can file the certificate only if subject to the income tax of the resident state.
Washington	Not applicable.
West Virginia	Reciprocal agreements are in place with Kentucky, Maryland, Ohio, Pennsylvania, and Virginia. A *West Virginia Certificate of Nonresidence* (found on the back of Form WV/IT-104) must be filed with the employer.
Wisconsin	Illinois, Indiana, Kentucky, Michigan, and Minnesota residents working within Wisconsin must provide a written statement to their employer certifying the place of residence in order for the employer to not withhold Wisconsin income tax. Minnesota residents are required to fill out Form W-222, *Statement of Minnesota Residency*, annually. Others must fill out Form W-220, *Nonresident Employee's Withholding Reciprocity Declaration.*
Wyoming	Not applicable.

Withholding Tax Reciprocity



Report all wages on Form W-2 for West Virginia and withhold West Virginia tax from all wages, as West Virginia has reciprocal agreements with Ohio and Pennsylvania. Employee must have submitted to the employer the Ohio and Pennsylvania forms that declare non-residence in those states.

WITHHOLDING RULE NO. 3: RESIDENT/NONRESIDENT TAXATION POLICIES

If an employee is a resident of one state but performs services in another, and there is no reciprocal agreement, you must consider the laws of both states. The correct determination of the state of residency (Rule No. 1) is very important in these situations because it tells you which state's laws you may need to consider in addition to those of the state in which the employee works.

The state in which the services are performed will almost always require withholding from nonresidents who come into the state to work (withholding only from the wages for services performed in that state). A few states have exceptions to this, usually based on whether the employee works in the state for less than a certain length of time or earns less than a certain amount of money. For example, if a California resident works in Arizona, Arizona withholding is required if the employee is physically present in the state for 60 days or more. In general, an employer is always subject to the laws of any state in which it has an employee performing services, whether or not the employer has a facility (such as an office, factory, or store) in the state.

The employee's state of residence may also need to be considered even if the employee doesn't work there. If the employer has a business connection, also referred to as "nexus," with the state in which the employee resides, then the employer is subject to the laws of that state, and may be required to withhold that state's income tax, in addition to the tax for the state in which the employee is working. For example, if the California resident works exclusively in Arizona for six months, and if the employer has nexus with California:

- Arizona withholding is required (the 60-day threshold is exceeded), and
- California withholding is required, with a credit for income tax withheld for the work-state (in this case, Arizona).

In this situation, the employer must first calculate and withhold Arizona income tax. Then the employer must calculate California income tax on the same wages and, if the California tax is greater, withhold an amount equal to the difference between the California income tax and the Arizona income tax. If the California tax is less than the Arizona tax, no California tax need be withheld.

If, however, the employer does not have nexus with California, then the employer is not subject to the laws of that state and is not required to withhold that state's income tax. However, the employee may have personal income tax liability on these and all other earned wages by virtue of being a resident of that state.

EMPLOYEES WORKING IN MULTIPLE STATES WITHOUT RECIPROCITY

If an employee works in multiple states that do not have reciprocity with the employee's state of residence, then the amount of wages earned in each state must be separately examined under withholding Rule No. 3. The first step is to split the wages by state, which may be done by the number of hours worked for an hourly employee or days worked for a salaried employee, or by the sales volume for a commissioned salesperson. The employer will definitely have nexus in the state in which services are performed and will most likely (depending on the state's law) need to withhold the work-state's tax from the wages earned within the state. In addition, if the employer has nexus in the employee's resident-state, it may need to consider withholding for that state from these wages as well.

There are exceptions to this process under the Amtrak Reauthorization and Improvement Act of 1990 (Pub. L. 101-322). Railroad and motor carrier employees (i.e., operators of a commercial motor vehicle, like a tractor, trailer, or semitrailer) who work in more than one state are subject only to the state and local income tax laws of their state of residence, regardless of where they work. Employees in air transportation are subject to withholding for their state of residence and any other state in which they earn more than half of their wages.

Under Pub. L. 106-489, merchant mariners employed in interstate commerce are subject to the state and local income taxes of their state of residence.

TELECOMMUTERS

Generally, employers withhold income tax for the state in which an employee performs services. This means that a telecommuter who works from home, in a different state than the location of the office to which he or she reports, is subject to tax by the resident state.

The convenience of the employer test. New York's tax policy on nonresident employees has been criticized because it can lead to double taxation for telecommuters. Besides other factors, New York sources income based on the "convenience of the employer test" (see 20 NYCRR §132.18). A New York nonresident who performs services for his or her employer *both* inside and outside of New York may apportion New York income based on the number of days that services are actually performed within New York. The caveat is that the nonresident employee must prove that the work performed outside of New York is done so for the employer's necessity, and not the employee's convenience.

New York is not the only state to use the convenience of the employer test. Two other states have very similar convenience rules:

1. Nebraska – Neb. Adm. Code Title 316, Ch. 22, Reg. 22-003.01C(1)
2. Pennsylvania – 61 Pa. Code §109.8

However, New York has been criticized because of its aggressive enforcement. In New York, the convenience of the employer test is notoriously difficult to prove. In one case, a computer programmer who lived in Nashville, Tennessee, and worked at his employer's New York office only when needed (about 60 days a year) was not allowed to apportion his income. He unsuccessfully argued that the test should not be applied to someone who lives well beyond commuting range and whose principal place of business is outside of New York (*Huckaby v. New York State Div. of Tax Appeals,* 776 N.Y.S. 2d 125 (2004)). The court held that the employee was working at home for his own convenience. The employer did not require him to work at home in Nashville. In October 2005, the U.S. Supreme Court declined to hear the appeal of this case.

While many states tax their residents on their total income, no matter where earned, many of those states will allow a resident to take a credit on the personal income tax return for taxes paid to another state (the "work state") on earnings for services performed in that other state. The problem for a telecommuter is that the resident state *is* the "work state."

Example – Sally, a Connecticut resident, works two days at home and three days in New York each week. Because it is her "home state," Connecticut will tax her on the full five days of income. New York will tax the income earned over the three days in New York, and it will tax the income earned over the two days in

Connecticut unless Sally can prove that her work was performed at home for her employer's necessity and not for her own convenience (very hard to prove).

And while a state generally gives a credit against its income tax for taxes paid to another state, Connecticut does not allow a credit for taxes paid to New York on earnings for work performed in Connecticut because it does not recognize New York's right to tax the income. In a nutshell, Sally is taxed by New York because she *could* have worked there and she is taxed by Connecticut because she *actually* worked there. Thus, on the income for services performed in Connecticut (two days a week), Sally is fully taxed twice.

New Jersey, another border state of New York, allows a credit for taxes paid to New York in this sort of situation.

Revised application of convenience of the employer test. In May 2006, the New York State Department of Taxation and Finance issued a memorandum explaining its revised application of the convenience of the employer test to a nonresident or part-year resident employee who performs services for a New York employer at both a New York location and a home office located out-of-state [TSB-M-06(5)I].

Effective for tax years beginning on or after January 1, 2006, any normal workday spent at an out-of-state home office by an individual whose assigned or primary office is in New York will be treated as a day worked outside New York if the home office is a bona fide employer office. Any day spent at the home office that is not a normal workday will be considered a nonworking day. A "normal workday" means any day that the individual performed the usual duties of his or her job. Responding to occasional phone calls or e-mails, reading professional journals, or being available if needed does not constitute "performing the usual duties" of his of her job.

Previously, days worked at home by a nonresident were considered workdays in New York if the employee's assigned or primary work location was at an established office or other place of business of the employer in New York. If the employee's assigned or primary work location was at an established office or other bona fide place of business of the employer outside New York, then any normal workday worked at home was treated as a day worked outside New York.

Factors to determine if a home office is a bona fide employer office. The following factors must be used by an employee to determine if his or her home office constitutes a bona fide employer office. The factors are divided into three categories: the primary factor, secondary factors, and other factors. For an office to be considered a bona fide employer office it must satisfy either: (1) the primary factor; or (2) at least four of the secondary factors and three of the other factors.

Primary factor. The primary factor is that the home office contains or is near specialized facilities. If the employee's duties require the use of special facilities that cannot be made available at the employer's place of business, but those facilities are available at or near the employee's home, then the home office will meet this factor (e.g., an employee uses a test track near his or her home to test new cars). However, if the employee's duties require the use of specialized scientific equipment that is set up at or near the employee's home, but could physically be set up at the employer's place of business located in New York, then the home office would not meet this factor.

Secondary factors. There are six secondary factors:

1. The home office is a requirement or condition of employment. For example, a written employment contract provides that the employee must work from home to perform specific duties for the employer.
2. The employer has a bona fide business purpose for the employee's home office location. For example, an engineer is working on several projects in his or her home state and it is necessary that he or she have an office nearby in order to meet project deadlines.
3. The employee performs some of the core duties of his or her employment at the home office. For example, a stock broker executes stock purchases and sales from his or her home office (the core duties of a stock broker include the purchase and sale of stock).
4. The employee meets or deals with clients, patients, or customers on a regular and continuous basis at the home office. For example, the employer has clients located near the employee's home office and the employee must meet with the clients at the home office once a week to perform the duties of his or her job.
5. The employer does not provide the employee with designated office space or other regular work accommodations at one of its regular places of business. For example, an employer reduces office space to decrease rental expenses and allows an employee to work from home. If the employee must come to the office, he or she uses a "visitor's" cubicle, conference room, or other available space that is also used by other employees.
6. Employer reimbursement of expenses for the home office. The employer must reimburse the employee for substantially all (80% or more) of the expenses (e.g., utility expenses, insurance) related to the home office, or must pay the employee a fair rental value for the home office space used and furnish or reimburse the employee for substantially all (80% or more) of the supplies and equipment used by the employee.

Other factors. There are 10 other factors:

1. The employer maintains a separate telephone line and listing for the home office.
2. The employee's home office address and phone number are listed on the business letterhead and/or business cards of the employer.
3. The employee uses a specific area of the home exclusively to conduct the business of the employer that is separate from the living area.
4. The employer's business is selling products at wholesale or retail and the employee keeps an inventory of the products or product samples in the home office for use in the employer's business.
5. Business records of the employer are stored at the employee's home office.
6. The home office location has a sign indicating a place of business of the employer.
7. Advertising for the employer shows the employee's home office as one of the employer's places of business.
8. The home office is covered by a business insurance policy or by a business rider to the employee's homeowner's insurance policy.
9. The employee is entitled to and actually claims a deduction for home office expenses for federal income tax purposes.
10. The employee is not an officer of the company.

Proposed federal legislation. In 2007, the following federal bills were introduced that would affect telecommuters: the Telecommuter Tax Fairness Act, and the Mobile Workforce State Income Tax Fairness and Simplification Act.

The Telecommuter Tax Fairness Act (S. 785/H.R. 1360) would have prohibited states, like New York, from applying the convenience of the employer test. Instead, taxation would have been based on physical presence. This legislation was introduced in August 2004, and reintroduced in May 2005, but failed to pass each time.

The Mobile Workforce State Income Tax Fairness and Simplification Act (H.R. 3359) would limit the authority of states and localities to tax the income of nonresidents working on temporary assignments within their borders. Similar legislation was introduced in September 2006, but failed to pass. Wages paid to an employee who performs duties in more than one state or locality would be subject to the income tax laws of the state or locality of the employee's residence and any state or locality in which the employee is physically present and performing duties for more than 60 days during the calendar year in which the income is taxed. APA testified before the U.S. Congress in favor of the proposed legislation when it was first introduced, and is currently working to have a new bill which includes compromises introduced in the 111th Congress (2009-2010).

WITHHOLDING ON RESIDENTS, NONRESIDENTS, AND EXPATRIATES		
State	**Residents: Withholding Required on Services Performed Out-of-State (and W-2 Wage Reporting Requirement), If Nexus**	**Nonresidents: Withholding Required on Services Performed In-State**
Alabama	Yes (report wages), unless withholding is taken for the state where services are performed (do not report wages).	Yes
Arizona	No, but the employer may withhold for AZ if the employee requests it on Form A-4V (withholding for either state should be separately reported on Form W-2).	Yes, if physically present in the state for 60 days or more in the calendar year.
Arkansas	Yes (report wages), unless withholding is taken for the state where services are performed (do not report wages).	Yes, but see reciprocity.
California	Yes, allowing a credit for withholding taken for the state where services are performed. Report wages on Form W-2 and quarterly Form DE 6.	Yes. The amount of wages subject to PIT withholding is that portion of the total number of working days employed in CA compared to the total number of working days employed in both CA and the other state. Report all PIT wages and PIT withheld on Form DE 6.
Colorado	Yes (report wages), unless withholding is taken for the state where services are performed (do not report wages).	Yes
Connecticut	Yes, allowing a credit for withholding taken for the state where services are performed (report wages).	Yes
Delaware	No (report wages). However, the employee may elect to have DE tax withheld. If so, allow a credit for withholding taken for the state where services are performed.	Yes

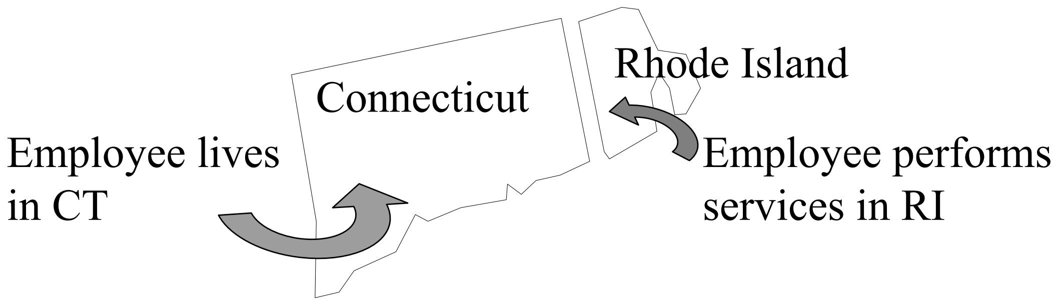
WITHHOLDING ON RESIDENTS, NONRESIDENTS, AND EXPATRIATES		
State	**Residents: Withholding Required on Services Performed Out-of-State (and W-2 Wage Reporting Requirement), If Nexus**	**Nonresidents: Withholding Required on Services Performed In-State**
Dist. of Col.	Yes (report wages).	No, provided the employee submits Form D-4-A, *Certificate of Non-Residence in the District of Columbia,* to the employer.
Georgia	Yes (report wages), unless withholding is taken for the state where services are performed (report wages).	Yes, if the nonresident works more than 23 days in a calendar quarter in GA, or if 5% of total earned income is attributable to GA, or if the remuneration for services in GA is more than $5,000.
Hawaii	Yes, if either (a) the regular place of employment is in HI, or (b) wages are paid from an office within HI (do not report wages).	Yes, unless these four conditions are met: (1) the employee will perform services in HI for no more than 60 days in the calendar year; (2) he/she is paid from an office outside HI; (3) his/her regular place of employment is outside HI; and (4) the employer does not reasonably expect the employee to perform services in HI for more than 60 days during the calendar year. If all conditions are met except the 60-day requirement and the Director of Taxation finds that withholding would be burdensome or enforcement impractical, an exception from the withholding requirement may be allowed.
Idaho	Yes (report wages), unless withholding is taken for the state where services are performed (report wages).	Yes, if the employee earns $1,000 or more in the year in ID and is subject to federal income tax withholding (report all ID wages on Form W-2 even if no ID tax is withheld).
Illinois	Yes, if any of the following conditions are met (report wages): (a) the employee's services are primarily performed in IL (out-of-state services are incidental to services in IL); (b) the services are not primarily performed in any one state, but some services are performed in IL, and either the base of operations is in IL, or, if there is no base of operations, the place from which the services are directed or controlled is in IL; or (c) the services are not primarily performed in any one state but some services are performed in IL, and the base of operations or the place from which the services are directed or controlled is not in any state in which the employee performs services.	Residents of states with which IL has reciprocity are not subject. Otherwise, IL income tax must be withheld on all income for services performed within and outside IL if either of the following conditions are met: (a) the employee's services are primarily performed in IL (out-of-state services are incidental to services in IL); or (b) the services are not primarily performed in any one state, but some services are performed in IL, and either the base of operations is in IL, or, if there is no base of operations, the place from which the services are directed or controlled is in IL.
Indiana	Yes (report wages).	Yes, but see reciprocity.
Iowa	Yes, withhold for the state in which the wages were earned, except Illinois (report all wages on Form W-2 for the work state(s)).	Yes, but see reciprocity.

WITHHOLDING ON RESIDENTS, NONRESIDENTS, AND EXPATRIATES		
State	**Residents: Withholding Required on Services Performed Out-of-State (and W-2 Wage Reporting Requirement), If Nexus**	**Nonresidents: Withholding Required on Services Performed In-State**
Kansas	Yes, allowing a credit for withholding taken for the state where services are performed (do not report wages).	Yes. Determine withholding using the apportionment formula found on Form K-4C, *Kansas Nonresident Employee Certificate for Allocation of Withholding Tax,* submitted by the nonresident employee.
Kentucky	Yes (report wages).	Yes, but see reciprocity.
Louisiana	Yes (report wages), unless withholding is taken for the state where the services are performed (do not report wages).	Yes. A nonresident who works partly within and partly outside LA must file Form R-1300 (L-4), *Employee's Withholding Exemption Certificate,* with the employer to be exempt from LA withholding on wages paid for services performed outside LA.
Maine	Yes (report wages).	Yes, if the nonresident works in ME for at least 10 days during the year.
Maryland	Yes (report wages), unless withholding is taken for the state where services are performed (do not report wages).	Yes, but see reciprocity.
Massachusetts	Yes, allowing a credit for withholding taken for the state where services are performed (report wages on Form W-2 but do not send it to the state; also report all wages on quarterly Form WR-1).	Yes
Michigan	Yes (report wages).	Yes, but see reciprocity.
Minnesota	Yes (report wages), provided federal income tax withholding from the employee's wages is required.	Yes, but see reciprocity.
Mississippi	Yes (report wages), unless withholding is taken for the state where services are performed (do not report wages).	Yes. Wages for services performed by a nonresident outside of MS are also subject to MS withholding if the nonresident's principal place of employment is within MS and he/she only occasionally works outside of MS, unless withholding is required by the other state in which the services are performed.
Missouri	Yes (report wages), unless withholding is taken for the state where services are performed (report wages).	Yes. A nonresident who works partly within and partly outside MO must file Form MO W-4A, *Certificate of Nonresidence/Allocation of Withholding Tax,* with the employer to exempt from MO withholding wages paid for services performed outside MO.
Montana	Yes (report wages).	Yes, but see reciprocity.

WITHHOLDING ON RESIDENTS, NONRESIDENTS, AND EXPATRIATES		
State	**Residents: Withholding Required on Services Performed Out-of-State (and W-2 Wage Reporting Requirement), If Nexus**	**Nonresidents: Withholding Required on Services Performed In-State**
Nebraska	Yes, allowing a credit for withholding taken for the state where services are performed (report wages).	Yes. A nonresident who works partly within and partly outside NE must file Form 9N, *Employee Certificate for Allocation of Withholding Tax,* with the employer to designate the approximate percentage of the wages subject to NE withholding. However, this does not determine the wage amount that must be included on the Form W-2 as NE wages.
New Jersey	Yes (report wages). However, if all services are performed outside NJ, allow a credit for withholding taken for the state where services are performed.	Yes, but see reciprocity.
New Mexico	Yes (report wages).	Yes, if the nonresident works in NM for 16 days or more in the calendar year.
New York	Yes, allowing a credit for withholding taken for the state and/or locality where services are performed (report wages).Unemployment insurance rules of coverage are followed to determine withholding and what wages to report and the state they should be reported to. Report all wages on Form W-2 but do not send them to the state; report all wages on 4th quarter Form NYS-45. NY State wages on Form W-2 must equal federal (box 1) wages. The employee will allocate his/her NY wages when filing the NY personal income tax return.	Yes. If a nonresident works only a short period of time in NY State and it is reasonably expected that the total wages for the services performed there will not exceed the amount of the employee's personal exemptions, the employer need not withhold NY State personal income tax until the aggregate amount paid to the employee exceeds the amount of the employee's personal exemptions (20 NYCRR 171.6(b)(4)). *Note:* NY State Department of Taxation and Finance Withholding Tax Field Audit Guidelines (9-17-04) provide that withholding is not required for nonresidents assigned to a primary work location outside of the state if they work in the state 14 or fewer days in a calendar year. Any part of a day spent performing services in NY State
New York *(continued)*		counts as a full day, but days spent in the state for training and professional development do not count as days. The 14-day rule does not apply to payments made to nonresident athletes and entertainers performing services in NY State, or to payments of deferred compensation or nonstatutory stock options. NY State wages on Form W-2 must equal federal (box 1) wages. The employee will allocate his/her NY wages when filing the NY personal income tax return.
North Carolina	Yes (report wages), unless withholding is taken for the state where services are performed (do not report wages).	Yes

WITHHOLDING ON RESIDENTS, NONRESIDENTS, AND EXPATRIATES		
State	**Residents: Withholding Required on Services Performed Out-of-State (and W-2 Wage Reporting Requirement), If Nexus**	**Nonresidents: Withholding Required on Services Performed In-State**
North Dakota	Yes (report wages), provided the employer's main place of business is in ND and the wages are subject to federal income tax withholding. However, if withholding is taken for the state where services are performed, do not withhold (do not report wages).	Yes, but see reciprocity.
Ohio	Yes (report wages).	Yes, but see reciprocity.
Oklahoma	Yes (report wages).	Yes, if the nonresident earns $300 or more in a calendar quarter.
Oregon	Yes (report wages), unless withholding is taken for the state where services are performed (report wages).	Yes, if the employee's OR earnings for the year will equal or exceed the OR standard deduction amount for his/her filing status.
Pennsylvania	Yes (report wages), unless withholding is taken for the state where services are performed (report wages).	Yes, but see reciprocity.
Rhode Island	No	Yes
South Carolina	Yes (report wages), unless withholding is taken for the state where services are performed (report wages).	Yes, if the employee is paid $800 or more per year.
Utah	Yes (do not report wages).	Yes, unless the employer receives an exemption from the Tax Commission (generally granted to employers doing business in the state for 60 days or less in the calendar year).
Vermont	Yes, allowing a credit for withholding taken for the state where services are performed (do not report wages).	Yes
Virginia	Yes, allowing a credit for withholding taken for the state where services are performed (employee must submit Form VA-4b, *Employee's Withholding Income Tax Credit for Income Taxes Paid to Another State,* to the employer).	Yes, but see reciprocity.
West Virginia	Yes (report wages).	Yes, but see reciprocity. If the nonresident works entirely within WV, withhold from all wages paid to the employee.
Wisconsin	Yes (report wages).	Yes, if the annual WI earnings are expected to be $1,500 or more.

Resident and Non-Resident Withholding



Neither Connecticut nor Rhode Island have reciprocal agreements with any other state. RI requires withholding from non-residents that work within its borders. CT requires withholding from wages of its residents for services performed in another state (assuming the employer has nexus), allowing credit for the other state's withholding. Withholding should be taken first for RI. If the employer has nexus in CT, and CT withholding on the same wages would be a higher amount, withhold the difference for CT. Report wages on Form W-2 for RI and CT.

HEALTH INSURANCE FOR DOMESTIC PARTNERS

Federal law: Generally, federal law provides that contributions made by an employer to an accident or health insurance plan providing insurance for its employees and their spouses and dependents are not wages and are not subject to federal income tax withholding or social security, Medicare, and federal unemployment (FUTA) taxes.

However, health insurance plan contributions and benefits are included in all federal wages if they are made or received on behalf of an employee's domestic partner unless that person is recognized as a spouse under state law or as a dependent under federal law. To be recognized as an employee's dependent, one must receive more than half of his or her support from the employee and live with the employee, and the relationship must not violate local law.

The federal Defense of Marriage Act, passed in 1996, provides that the word "marriage" in any federal law, ruling, regulation, or interpretation of a federal agency, means only a legal union between one man and one woman as husband and wife, and the word "spouse" refers only to a person of the opposite sex who is a husband or a wife. So, if the employee and the partner are of the same sex, the partner does not qualify as the employee's spouse for federal tax purposes, regardless of state law.

Example: Kathy's domestic partner, Gina, is covered under Kathy's health insurance plan. Kathy earns $50,000 a year at her job, and her domestic partner's health insurance is valued at $200 a month. The cost of covering Gina results in $2,400 of imputed income that is taxable to Kathy. Kathy will be taxed on $52,400 for the year. A married person, on the other hand, who covers his or her spouse would be taxed only on the $50,000 salary.

State law: A growing number of states exclude domestic partner health insurance benefits from state taxable wages. In addition, many of those states require employers to offer health insurance benefits to the domestic partners of employees to the same extent it offers them to the federally-recognized spouses of employees.

However, if an employer operates a self-insured group health plan, the employer may not be required to provide benefits to the domestic partner of an employee, regardless of the requirements on the following chart. This is because self-insured plans are governed by a federal law called ERISA, which supersedes state law and prohibits state and local regulation of employee benefits. The employer may still do so voluntarily, and state law will still govern the state taxation of the benefit.

Decision soon in California: On May 15, 2008, the California Supreme Court ruled that California laws limiting marriage to opposite-sex couples were unconstitutional. On June 16, 2008, same-sex marriages began to be performed in California. However, on November 4, 2008, voters approved Proposition 8, which amends the California Constitution to ban same-sex marriage. Lawsuits challenging Proposition 8 have been filed. The ban on same-sex marriage will remain in place until a final decision is reached by the court on Proposition 8. The California Supreme Court is expected to reach a decision in May or June. Meanwhile, the California Franchise Tax Board has said that same-sex marriages performed in California between June 16, 2008, and November 4, 2008, are recognized as valid marriages for California purposes.

				Fed Wages	CA Wages	NJ Wages
Salary		20		20	20	20
Total Health Insurance	10					
Employer Paid	7					
Employee Coverage		4				
Domestic Partner Coverage		3		3		
Employee Deductions	3					
Employee Coverage		2		-2	-2	
Domestic Partner Coverage		1			-1	
Taxable Wages				21	17	20

Domestic Partner Health Insurance Benefits

State	Recognized Status	Must employer offer health insurance to employees' partners in these statuses to the same extent it offers it to employees' opposite-sex spouses?	Exempt from state taxable income?
California	1. Domestic Partner[1] 2. Spouse	Yes.	Yes.
Connecticut	1. Civil Union 2. Spouse	Yes.	Yes.
District of Columbia	Domestic Partner[2]	DC government employers only.	Yes.
Hawaii	Reciprocal Beneficiary	No.	No.
Iowa	Spouse (eff. 4-27-09)	Yes.	Yes.
Maine	Domestic Partner	No.	No.
Massachusetts	Spouse	Yes.	Yes.
New Hampshire	Civil Union	Yes.	No state income tax.
New Jersey	Civil Union	Yes.	Employer-provided benefit is exempt. However, employee contributions do not decrease state taxable wages, as NJ doesn't recognize cafeteria plans.
New York	Spouse, under same-sex marriage performed elsewhere	Yes	Yes
Oregon	Domestic Partner	• Oregon state/local government employers: yes. • Private employers: unclear.	Yes.
Vermont	1. Civil Union 2. Spouse (eff. 9-1-09)	Yes.	Yes.
Washington	Domestic Partner[3]	Washington state/local government employers only.	No state income tax.

(Footnotes)

1 An opposite-sex couple may enter into a domestic partnership if one or both of them is over age 62 and eligible to collect Social Security benefits because of age, disability, or blindness.

2 An opposite-sex couple may enter into a domestic partnership.

3 An opposite-sex couple may enter into a domestic partnership if one or both of them is at least age 62.

SPECIAL CONSIDERATIONS FOR CERTAIN BENEFITS IN NEW JERSEY AND PENNSYLVANIA

<table>
<tr><th>Benefit</th><th>New Jersey</th><th>Pennsylvania</th></tr>
<tr><td>Group-term Life Insurance</td><td>Follows federal rules.</td><td>Nontaxable.</td></tr>
<tr><td>Moving Expenses</td><td>Follows federal rules.</td><td>Exempt from withholding if
1. expenses are within the categories of
a. transportation of household goods and personal effects and
b. travel, lodging, and meals during the actual move;
2. expenses equal or exceed reimbursement;
3. the move is at the request or direction of the employer; and
4. the new workplace is at least 50 miles further away from the employee’s old residence than the old workplace was located.

All moving expense reimbursements are to be included as state wages, and all but the above are subject to withholding. Expenses meeting the above requirements are to be claimed as a deduction on the employee’s Schedule UE when filing the personal income tax return, so as to avoid taxability.</td></tr>
<tr><td>Educational Assistance</td><td>Excludable if the education:
1. is not a minimum requirement for employment; and
2.
a. maintains or improves skills required by the employee in his or her trade, business, or employment,
b. meets the express requirements of the employer (other than as in (1) above), or
c. meets the requirements of applicable law or regulations imposed as a condition of the retention of the employee’s salary status or employment.</td><td>Excludable if the education is required by law or by the employer to retain the specific skills needed for the present position.</td></tr>
</table>

Benefit	New Jersey	Pennsylvania
Section 125 (cafeteria plan)	Taxable. Deductions from pay for section 125 benefits do not decrease wages subject to withholding. If the employer gives the employee an amount to take as cash or to spend on benefits, the entire amount is taxable, whether taken in cash or spent on benefits. Exception to either case: if the employer requires a minimum amount of coverage, employee expenditure for this will decrease taxable wages. However, the value of a cafeteria plan is excludable from New Jersey gross income only if all of the following qualifications are met: (1) the value is excludable for federal income tax purposes and the plan meets the requirements of IRC Section 125; (2) the option to receive cash instead of a federally-excludable cafeteria plan benefit is conditioned on the employee having a similar benefit from another source; (3) the cafeteria benefit is not provided pursuant to a salary reduction agreement or an agreement to forego increases in compensation, including but not limited to, flexible spending accounts or premium conversion options; and (4) the employee elects to receive the cafeteria plan benefit instead of cash. See TB-39(R), March 3, 2003.	Follows federal rules. Nontaxable if used for coverage for hospitalization, sickness, disability, death, supplemental unemployment benefits, or strike benefits.
Section 129 (dependent care)	Taxable.	Taxable, unless it is an employer-provided dependent care facility.
Section 401(k)	Follows federal rules. However, New Jersey does not exempt contributions to other deferred compensation plans (§§457, 403(b), SIMPLE, SEP, and nonqualified deferred compensation).	Taxable, as well as other qualified deferred compensation plans. Follows federal rules for non-qualified deferred compensation plans.
Personal use of company car	Follows federal rules.	Nontaxable.
Transportation fringe	New Jersey has its own wage exclusion for amounts paid to employees specifically for using alternate means of commuting (such as public transportation, carpools, or vanpools, and for parking at or near a park-and-ride facility). Employee expenses must be substantiated. Employer may give up to $1,440 for 2008 (2009 amount will be announced in the spring), may exclude it from New Jersey taxable wages, and must report it in Form W-2, Box 14. Other parking benefits, even those excluded under IRC Section 132, are taxable.	Pre-tax deductions do not reduce state taxable wages. Transportation fringe benefits are excludable if the property or service is owned or under lease by the employer (such as a company-owned parking lot or a company-owned van used to pick up employees and bring them to work). In addition, public transit benefits are excludable only if the employer purchases them (such as passes) and gives them to employees without any reduction to their compensation. However, if an employee purchases a transit pass and is then reimbursed by the employer, the reimbursement is taxable.

Benefit	New Jersey	Pennsylvania
Partial-wage sick pay from employer or third-party sick pay (if employer pays premium)	Nontaxable, unless calculated as a percentage of earnings.	Sick pay from an employer (employer bears the risk) is: (1) nontaxable if the payment amount is related only to severity of illness or injury; and (2) taxable if the payment amount is related to an employee's salary, position, or period of absence from work. Third-party sick pay (risk borne by third party, under an insurance arrangement) is nontaxable.

SEVERANCE PAY

States not following federal treatment of severance pay

- Under federal law, dismissal or severance pay, which is provided to employees because they were terminated involuntarily through no fault of their own (e.g., downsizing, plant closing, company relocation, etc.), must be included in the terminated employee's income and is subject to federal income tax withholding and social security, Medicare, and FUTA taxes. These amounts are subject to taxation when paid, because they are not subject to the special timing rules applicable to nonqualified deferred compensation.
- Alabama: Up to $25,000 of an employee's compensation can be exempt from state, county, or municipal income tax if the payments are received as severance pay, unemployment compensation, termination pay, or pay from a supplemental income plan received as a result of administrative downsizing. Exempt severance payments should not be reported on Form W-2 in Box 16 ("State wages, tips, etc.") as Alabama taxable wages, but they should be included in Box 1 ("Wages, tips, other compensation") for federal purposes, and disclosed in Box 14 ("Other") as "Exempt Severance Payments" (or "ESP"). Employers must obtain approval from the Department of Revenue before exempting severance pay from Alabama withholding tax.
- North Carolina: Up to $35,000 of severance wages paid to an employee (whether paid in one year or over several years) as a result of the employee's permanent, involuntary termination from employment through no fault of the employee is exempt from withholding. "Stay-on pay" does not qualify as severance wages. Exempt severance payments should not be reported on Form W-2 in Box 16 ("State wages, tips, etc.") as North Carolina taxable wages, but they should be included in Box 1 ("Wages, tips, other compensation") for federal purposes, and disclosed in Box 14 ("Other") as "Exempt Severance Payments" (or "ESP").

CAFETERIA PLAN AND §401(K) SALARY REDUCTIONS

Not all states treat salary reductions under a §125 cafeteria plan or a §401(k) cash or deferred arrangement in the same manner as the Internal Revenue Code. The chart shows how each state treats these salary reductions in relation to their inclusion in taxable income for state income and unemployment insurance tax purposes.

KEY TO CHART

Under federal law, deferrals to §125 cafeteria plans are not subject to income tax withholding; they also are not subject to federal unemployment tax (FUTA), unless made to a §401(k) plan, or social security and Medicare taxes (FICA; hence the notation "No (+ FICA)" in the "U.I. Taxable" column under "Federal"). Thus, in the columns under the heading, “Cafeteria Plan (§125) Deferrals,” a “No” in the “Income Taxable” column means that the state follows federal law and does not tax such deferrals; a “Yes” means the state does tax the deferrals and does not follow federal law. In the “U.I. Taxable” column, a “No” indicates that the state follows federal law and, therefore, does not tax cafeteria plan deferrals for unemployment insurance purposes (unless made to a §401(k) plan); a “Yes” indicates the state deviates from federal law and does impose unemployment insurance tax on cafeteria plan deferrals.

Similarly, under the heading, “CODA (§401(k) Plan) Deferrals,” a “No” means the state follows federal law and, therefore, does not subject such deferrals to income tax; a “Yes” means federal law is not followed and the state does impose income tax on such deferrals. In the “U.I. Taxable” column, a “Yes” indicates that salary deferrals are subject to state unemployment insurance taxes (as they are under federal law, which also requires FICA withholding), but the state may or may not treat employer matching contributions the same way (please check the law of the states where you operate).

Finally, an entry of “N/A” in any of the “Income Taxable” columns indicates that the state has no income tax on wages.

While these “yes” and “no” answers describe the general rule in a state, there may be limitations or variations, so employers should check the individual laws in the states where they operate to complete their research.

STATE TAXATION OF SALARY DEFERRALS TO CAFETERIA PLANS AND §401(K) PLANS

	Cafeteria Plan (§125) Deferrals		CODA (§401(k) Plan) Deferrals	
	Income Taxable	U.I. Taxable	Income Taxable	U.I. Taxable
Federal	**No**	**No (+ FICA)**	**No**	**Yes (+ FICA)**
Alabama	No	Yes	No	Yes (elective contributions only)
Alaska	N/A	No if used to purchase group-term life insurance, accident or health insurance, or retirement benefits.	N/A	No
Arizona	No	No	No	Yes
Arkansas	No	No	No	Yes
California	No	No	No	Yes
Colorado	No	No	No	Yes (elective contributions only)
Connecticut	No	Yes	No	Yes (elective contributions only)
Delaware	No	Yes	No	Yes
Dist. of Col.	No	Yes	No	Yes
Florida	N/A	No	N/A	Yes
Georgia	No	No	No	Yes
Hawaii	No	Yes	No	Yes
Idaho	No	No	No	Yes (elective contributions only)

STATE TAXATION OF SALARY DEFERRALS TO CAFETERIA PLANS AND §401(K) PLANS				
	Cafeteria Plan (§125) Deferrals		**CODA (§401(k) Plan) Deferrals**	
	Income Taxable	**U.I. Taxable**	**Income Taxable**	**U.I. Taxable**
Federal	**No**	**No (+ FICA)**	**No**	**Yes (+ FICA)**
Illinois	No	No if used to purchase medical or life insurance.	No	Yes
Indiana	No	No	No	Yes
Iowa	No	Yes	No	Yes (elective contributions only)
Kansas	No	No	No	Yes (elective contributions only)
Kentucky	No	Yes	No	Yes
Louisiana	No	No	No	Yes
Maine	No	No	No	Yes
Maryland	No	No	No	Yes
Massachusetts	No	Yes	No	Yes
Michigan	No	Yes	No	Yes
Minnesota	No	Yes	No	Yes
Mississippi	No	No	No	Yes
Missouri	No	No	No	Yes
Montana	No	Yes	No	Yes (elective contributions only)
Nebraska	No	No	No	Yes
Nevada	N/A	Yes	N/A	Yes
New Hampshire	N/A	Yes	N/A	Yes
New Jersey	Yes	Yes	No	Yes
New Mexico	No	No	No	Yes
New York	No	Yes	No	Yes
North Carolina	No	No	No	Yes
North Dakota	No	Yes	No	Yes
Ohio	No	No	No	Yes
Oklahoma	No	No	No	Yes (elective contributions only)
Oregon	No	No if used to purchase medical or life insurance.	No	Yes
Pennsylvania	No if used to purchase health or life insurance, disability insurance, supplemental unemployment benefits, or strike benefits.	Yes	Yes	Yes

STATE TAXATION OF SALARY DEFERRALS TO CAFETERIA PLANS AND §401(K) PLANS				
	Cafeteria Plan (§125) Deferrals		CODA (§401(k) Plan) Deferrals	
	Income Taxable	U.I. Taxable	Income Taxable	U.I. Taxable
Federal	**No**	**No (+ FICA)**	**No**	**Yes (+ FICA)**
Puerto Rico	Yes, except qualified pension plan deferrals.	Yes	No	Yes
Rhode Island	No	No	No	No
South Carolina	No	No (employer contributions only)	No	Yes (elective contributions only)
South Dakota	N/A	Yes	N/A	Yes
Tennessee	N/A	Yes	N/A	Yes
Texas	N/A	Yes	N/A	Yes (elective contributions only)
Utah	No	No	No	Yes
Vermont	No	Yes	No	Yes
Virginia	No	No	No	Yes
Washington	N/A	Yes	N/A	Yes
West Virginia	No	Yes	No	Yes
Wisconsin	No	No	No	Yes
Wyoming	N/A	No	N/A	Yes

STATE EMPLOYEE WITHHOLDING ALLOWANCE CERTIFICATES

More than 40 states have a state income tax and require withholding from wages to collect it. While many of those states allow employers to use the employee's federal Form W-4 to calculate state income tax withholding, others have a separate state withholding allowance certificate because state exemptions may differ from federal exemptions. A total of 22 states accept the federal Form W-4 for state withholding purposes. However, 9 of those states (AR, CA, GA, MA, NJ, NY, VT, WV, and WI) also have their own withholding allowance certificate and generally encourage use of the state form because the state and federal exemptions may not be identical.

You must keep federal and state employee withholding allowance certificates on file for each employee. If the employee does not provide an original, complete, valid, signed federal Form W-4, you must withhold for federal income tax purposes as if the employee were single with zero withholding allowances. Most states follow this rule for state income tax purposes if an employee fails to submit a state withholding allowance certificate to you. In the 9 states where the federal Form W-4 is an acceptable substitute, you may use the federal form for state income tax withholding purposes. If no federal form is submitted, you must follow the federal rule and withhold as if the employee were single with zero withholding allowances.

Check the following chart to see if your state has its own state withholding allowance certificate and/or accepts the federal Form W-4. You also may check how you should withhold if an employee does not provide you with a completed form. Note that in Pennsylvania there are no state withholding allowance certificate requirements because state law does not permit any withholding exemptions. Consequently, employers are required to withhold Pennsylvania state income tax from resident and nonresident employees earning income in Pennsylvania at a flat rate of 3.07% of gross wages. There are also nine states that currently do not have a state income tax (AK, FL, NV, NH, SD, TN, TX, WA, and WY). These states are not reflected on the chart.

STATE WITHHOLDING ALLOWANCE CERTIFICATES			
State	**Form Name**	**Accepts Federal Form?**	**Default Status If No State Form Submitted**
Alabama	A-4	No	Withhold as if single with zero exemptions claimed.
Arizona	A-4	No	Withhold minimum withholding percentage based on annual pay.
Arkansas	AR4EC	Yes	Withhold as if zero exemptions or dependents claimed, or use federal W-4.
California	DE 4	Yes	Use federal W-4.
Colorado	No state form	Yes	Withhold as if single with zero allowances claimed.
Connecticut	CT-W4	No	Withhold at highest rate with zero exemptions.
Delaware	No state form	Yes	Withhold as if single with zero allowances claimed.
Dist. of Col.	D-4	No	Withhold as if zero allowances claimed.
Georgia	G-4	Yes	Withhold as if single with zero allowances claimed, or use federal W-4.
Hawaii	HW-4	No	Withhold as if single with zero allowances claimed.
Idaho	No state form	Yes	Withhold as if single with zero allowances claimed.
Illinois	IL-W-4	No	Withhold with zero allowances.
Indiana	WH-4	No	Withhold with zero allowances.
Iowa	IA W4	No	Contact employee for number of exemptions.
Kansas	K-4	No, if hired on or after 1-1-08	Withhold as if single with zero allowances claimed.
Kentucky	K-4	No	Withhold as if zero exemptions claimed.
Louisiana	R-1300 (L-4) R-1300T (eff. 1-1-09 – 6-30-09)	No	Withhold as if zero exemptions or dependents claimed.
Maine	W-4ME	No	Withhold as if single with zero allowances claimed.
Maryland	MW 507	No	Withhold as if one exemption claimed.
Massachusetts	M-4	Yes	Use federal W-4.
Michigan	MI-W4	No	Withhold with zero allowances.
Minnesota	No state form	Yes	Withhold as if single with zero allowances claimed.
Mississippi	89-350	No	Withhold as if zero exemptions claimed.
Missouri	MO W4	No	Withhold as if single with zero allowances claimed.
Montana	No state form	Yes	Withhold as if single with zero allowances claimed.
Nebraska	No state form	Yes	Withhold as if single with zero allowances claimed.
New Jersey	NJ-W4	Yes	Use federal W-4.

STATE WITHHOLDING ALLOWANCE CERTIFICATES			
State	**Form Name**	**Accepts Federal Form?**	**Default Status If No State Form Submitted**
New Mexico	No state form	Yes	Withhold as if single with zero allowances claimed.
New York	IT-2104	Yes	Use federal form W-4.
North Carolina	NC-4	No	Withhold as if single with zero allowances claimed.
North Dakota	No state form	Yes	Withhold as if single with zero allowances claimed.
Ohio	IT-4	No	Withhold with zero exemptions.
Oklahoma	No state form	Yes	Withhold as if single with zero allowances claimed.
Oregon	No state form	Yes	Withhold as if single with zero allowances claimed.
Puerto Rico	499 R-4.1	No	Withhold with zero exemptions or allowances.
Rhode Island	No state form	Yes	Withhold as if single with zero allowances claimed.
South Carolina	No state form	Yes	Withhold with zero exemptions.
Utah	No state form	Yes	Withhold as if single with zero allowances claimed.
Vermont	W-4VT	Yes	Use federal W-4; if additional withholding is shown on federal W-4 withhold an additional 27%.
Virginia	VA-4	No	Withhold as if zero exemptions claimed.
West Virginia	WV/IT-104	Yes	Use federal W-4.
Wisconsin	WT-4	Yes	Use federal W-4.

STATE UNEMPLOYMENT INSURANCE

This section deals with the State Unemployment Insurance (SUI or SUTA) portion of the federal/state unemployment system. Although the Federal Unemployment Tax Act provides a framework for state funding and coverage requirements, states each have their own methods for determining tax rates, wage bases, and benefit eligibility and amounts. The basics of state unemployment insurance programs as they relate to the payroll process will be discussed here.

THE EMPLOYMENT RELATIONSHIP

Employers within a state are generally covered by the state's unemployment insurance program if they meet the requirements for coverage under FUTA, although some states provide even broader terms for coverage. But even if an employer is subject to a state's unemployment insurance law, it is covered only to the extent its workers are performing covered services as employees rather than as independent contractors.

EMPLOYEES WORKING IN MORE THAN ONE STATE

When employees perform services all in one state, the employer pays unemployment taxes to that state. But all the aspects of unemployment insurance become more complex when employees work in more than one state. An incorrect determination of the state having jurisdiction for unemployment insurance purposes can mean paying double taxes in some states while paying penalties and interest for failing to pay taxes in other states.

There are four factors employers can use in determining to which state an employee should be "allocated" for unemployment insurance purposes:

Are services "localized?" An employee's services are localized within a state if services performed outside the state are merely incidental to services performed inside the state (e.g., a temporary assignment to a company division in another state). If an employee's services are localized, the employer is subject to the unemployment insurance law of that state for the employee and the other allocation factors need not be considered.

Does the employee have a "base of operations?" When an employee regularly works in more than one state (no localization), the employer should look to see if the employee has a base of operations in one of those states. A base of operations can be the place where an employee reports to work or returns from work, or a place where the employee has an office, receives instructions from the employer, receives mail and supplies, or keeps business records (e.g., a regional sales office where a sales representative with a multistate territory receives mail, keeps records, and gets instructions). If the employee has a single base of operations in a state where he or she works, that state's unemployment insurance law governs.

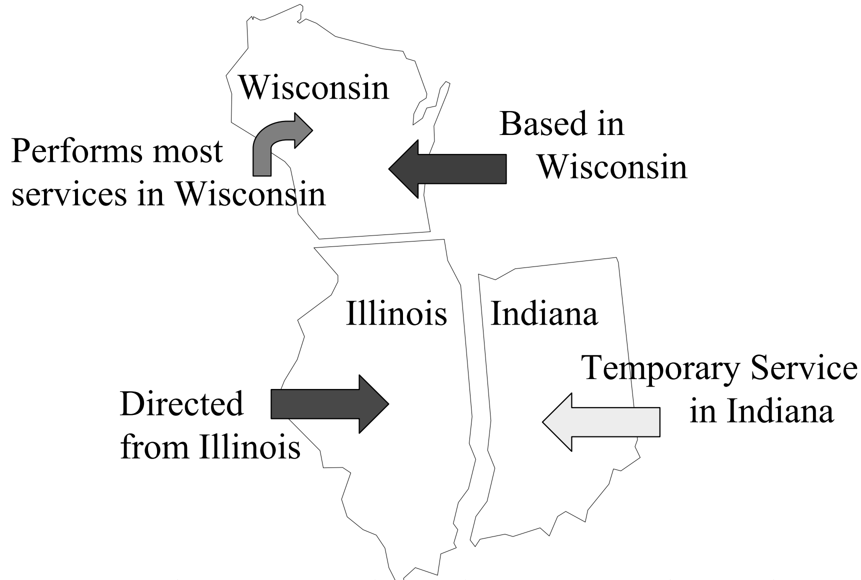
Is there a "place of direction or control?" If the employee's work is not localized and there's no base of operations, the next factor to analyze is whether there is a place of direction or control in one of the states where the employee performs services. A place of direction or control refers to an employer's facility from which it exercises or can exercise immediate control over the employee's services (e.g., a sales representative who works in several states without a base of operations but must check in with his sales manager, whose office is in one of the states where the salesperson works).

What is the employee's "state of residence?" In those relatively rare instances where none of the three previous factors can be applied, the state of the employee's residence has jurisdiction if the employee performs some work there (e.g., a computer manufacturer's troubleshooter who lives and works in one state, has a base of operations in another, and services customers in several other states).

Interstate reciprocal coverage arrangements. What if none of the above tests for multi-state workers apply? Be aware that nearly all the states participate in reciprocal coverage arrangements allowing employers to choose the state of coverage for certain multi-state workers who regularly move from state to state. Under such arrangements, the employer can choose to cover the entire service of the employee in:

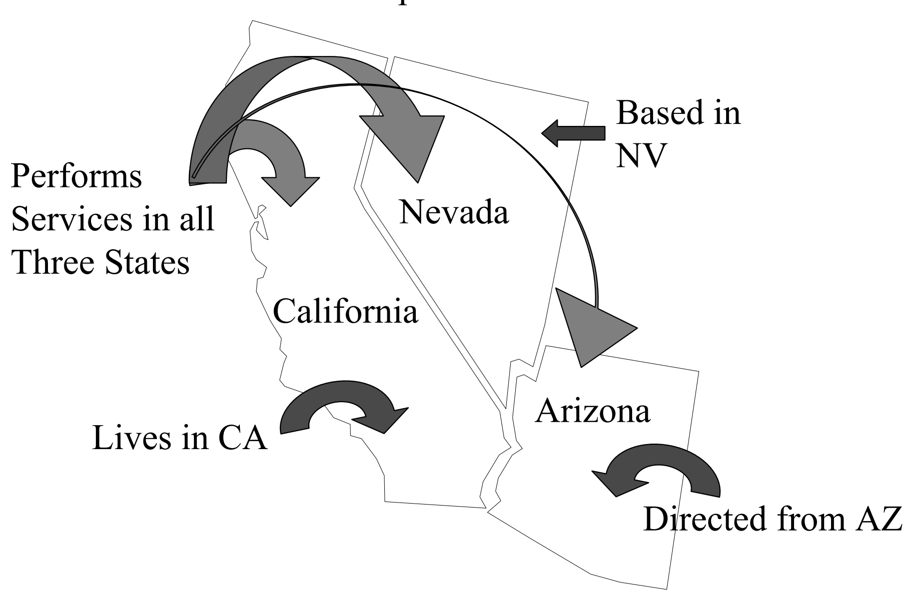
- Any state in which the employee works;
- Any state in which the employer maintains a place of business; or
- The employee's state of residence.

Localization of Services



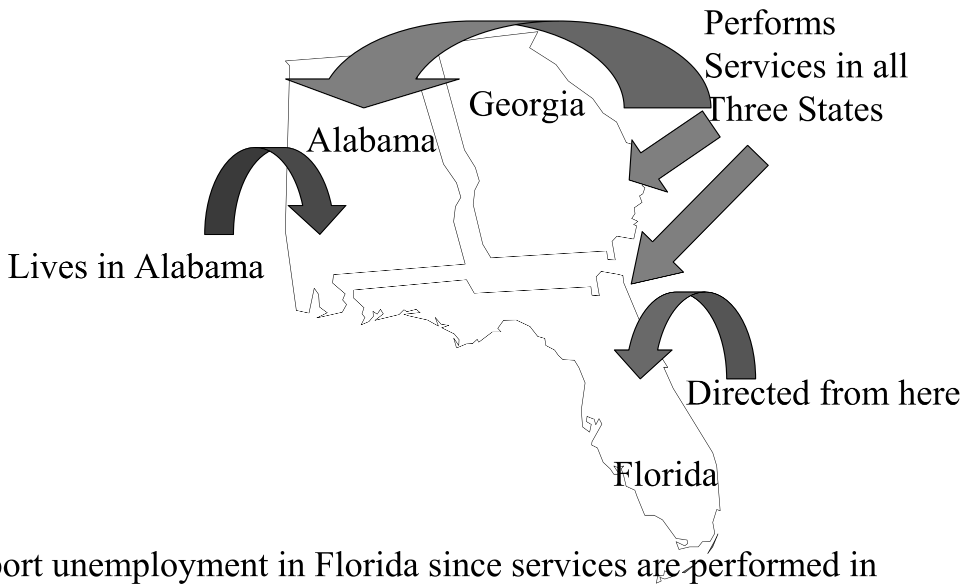
Report unemployment to Wisconsin as most of the services are performed in Wisconsin and the services in Indiana are temporary.

Base of Operations



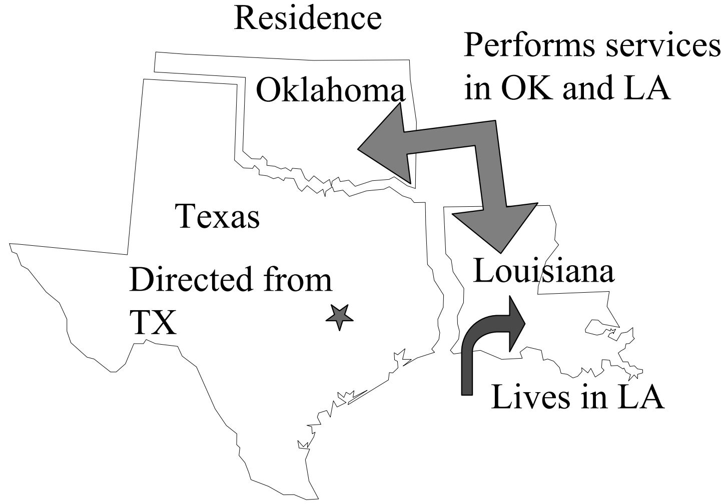
Report unemployment in NV since the services are performed in more than one State and some of the services are performed in NV where the base of operations is located.

Direction and Control



Report unemployment in Florida since services are performed in more than one State, the employee does not have a base of operations and some services are performed in Florida.

Residence



Report unemployment to Louisiana since the services are performed in more than one state, the employee has no base of operations, no services are performed in Texas, but some services are performed where the employee resides.

SUI TAXABLE WAGES

Following the FUTA scheme, state unemployment contributions (taxes) are determined by applying a certain percentage to the taxable wages paid by the employer. FUTA requires that each state's taxable wage base must at least equal the FUTA taxable wage base of $7,000 per employee, and most states have wage bases that exceed the required amount. The states use varying formulas for determining the taxable wage base, with many tying theirs by law to the FUTA wage base and others using a percentage of the state's average annual wage.

The types of payments included as taxable wages by the states are generally those considered taxable wages for FUTA purposes (wages, salary, bonuses, commissions, noncash payments). But several states differ from the FUTA approach when it comes to sick or disability pay, cafeteria plan benefits, tips, and others. Employers must check the state laws and rules in the states where they have employees to determine whether the payments made to them are taxable wages.

SUI wage transferability. Generally, an employee's SUI-taxable wages for one state may be applied toward the SUI wage base of another state, within the same tax year, as long as the employee is working for the same employer (same employer identification number).

The following examples use 2009 SUI wage bases, and "earning wages in a state" is used to express the state to which the wages must be reported and upon which SUI tax must be paid (up to wage base limits), regardless of where the employee actually performs services.

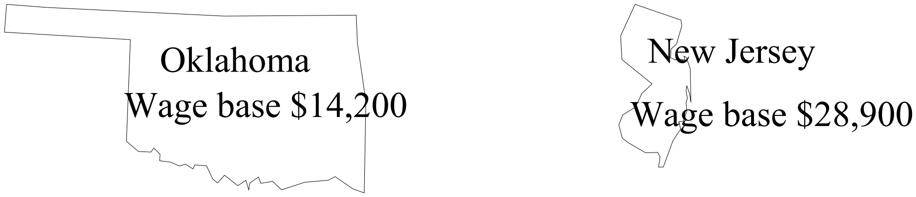
Example 1.
An employee earns $9,000 in Kansas (wage base = $8,000).
Wages subject to SUI tax = $8,000 (wage base limit).
Then, the employee earns $15,000 in Maine (wage base = $12,000).
Wages subject to SUI tax = $4,000 ($12,000 wage base less $8,000 already subject to SUI tax in another state in the same year).

Example 2.
An employee earns $19,500 in Oregon (wage base = $31,300).
Wages subject to SUI tax = $19,500 (wages earned are less than the limit).
Then, the employee earns $10,000 in California (wage base = $7,000).
Wages subject to SUI tax = $0 (wages already subject to SUI tax this year exceed CA wage base).

Minnesota only state not following general rule. As of January 1, 2000, Minnesota no longer accepts the SUI wages from other states for transferability purposes.

STATE UNEMPLOYMENT INSURANCE TAXABLE WAGE BASES			
State	**2009 Wage Base**	**State**	**2009 Wage Base**
Alabama	$8,000	Montana	$25,100
Alaska	32,700	Nebraska	9,000
Arizona	7,000	Nevada	26,600
Arkansas	10,000	New Hampshire	8,000
California	7,000	New Jersey	28,900
Colorado	10,000	New Mexico	20,900
Connecticut	15,000	New York	8,500
Delaware	10,500	North Carolina	19,300
Dist. of Col.	9,000	North Dakota	23,700
Florida	7,000	Ohio	9,000
Georgia	8,500	Oklahoma	14,200
Hawaii	13,000	Oregon	31,300
Idaho	33,200	Pennsylvania	8,000
Illinois	12,300	Puerto Rico	7,000
Indiana	7,000	Rhode Island	18,000
Iowa	23,700	South Carolina	7,000
Kansas	8,000	South Dakota	9,500 (10,000, eff. 1-1-10 and thereafter)
Kentucky	8,000	Tennessee	7,000
Louisiana	7,000	Texas	9,000
Maine	12,000	Utah	27,800
Maryland	8,500	Vermont	8,000
Massachusetts	14,000	Virginia	8,000
Michigan	9,000	Washington	35,700
Minnesota	26,000	West Virginia	8,000
Mississippi	7,000	Wisconsin	12,000
Missouri	12,500 (13,000 maximum, eff. 1-1-10 and thereafter)	Wyoming	21,500

Transferability of Unemployment Wages



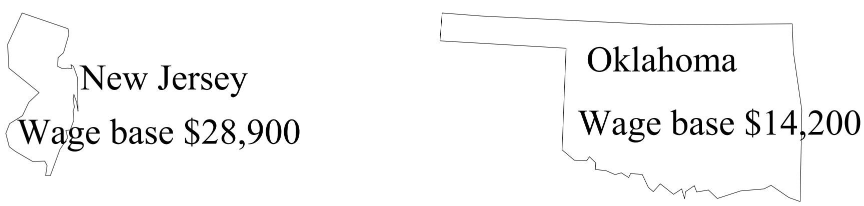
An employee's state unemployment insurance (SUI) taxable wages for one state may be applied toward the SUI wage base of another state (except for Minnesota), within the same tax year, as long as the employee is working for the same employer.

Example:

An employee earns $15,000 in Oklahoma
Wages subject to Oklahoma SUI = $14,200 (wage limit)
Employee moves to New Jersey
Employee earns $30,000 in New Jersey

Wages subject to New Jersey SUI = $14,700 ($28,900 NJ wage base less $14,200 already subject to SUI tax in Oklahoma)

Transferability of Unemployment Wages



An employee's state unemployment insurance (SUI) taxable wages for one state may be applied toward the SUI wage base of another state (except Minnesota), within the same tax year, as long as the employee is working for the same employer.

Example:

An employee earns $20,000 in NJ
Wages subject to NJ SUI = $20,000
Employee moves to Oklahoma
Employee earns $15,000 in Oklahoma

Wages subject to Oklahoma SUI = $0 ($14,200 OK wage base less $20,000 already subject to SUI tax in NJ)

EMPLOYEE CONTRIBUTIONS

Alaska, New Jersey, and Pennsylvania require employers to withhold unemployment contributions from their employees' wages; however, the withholding rates are much lower than the employer's contribution rates in those states.

The following chart provides the 2009 taxable wage base, employee tax rate, and maximum employee deduction:

State	Taxable Wage Base	Employee Tax Rate	Maximum Employee Deduction
Alaska	$32,700	0.5%	$163.50
New Jersey	$28,900	0.425%	$122.83
Pennsylvania	Gross wages	0.06%	None

STATE DISABILITY INSURANCE AND PAID FAMILY LEAVE

California, Hawaii, New Jersey, New York, Puerto Rico, and Rhode Island provide benefits to employees who are temporarily disabled by a nonwork-related illness or injury through a tax-supported state fund. The funds operate in much the same way as state unemployment insurance systems and under many of the same rules regarding coverage, taxable wages, exemptions, benefit eligibility, etc. However, unlike UI, covered wages for one state may not be applied toward the wage base of another state.

Employers may be required to pay a payroll tax similar to unemployment contributions, and must withhold and pay a percentage of their employees' wages. Employers that have employees in any one of these states should review the state laws carefully for their obligations regarding contributions, withholding, reporting, etc.

California was the first state to provide its workers with paid family leave. The Paid Family Leave (PFL) program is administered by the Employment Development Department's State Disability Insurance Branch, and extends disability compensation to employees who take time off from work to care for a seriously ill child, spouse, parent, or domestic partner, for the birth, adoption, or foster care placement of a child. PFL benefits are funded entirely by employees through increased contributions to the SDI fund.

New Jersey became the second state to offer paid family leave when, on May 2, 2008, Governor Jon Corzine signed legislation creating a Family Leave Insurance (FLI) program. The FLI program allows employees to take paid leave to care for sick family members, newborns, and newly adopted children beginning July 1, 2009. The program is funded by employee contributions to the existing Temporary Disability Insurance fund beginning January 1, 2009.

Washington Governor Christine Gregoire signed legislation in May 2007 establishing a paid family leave insurance plan, but the issue of how to fund it was never fully decided. Due to budget constraints, Gov. Gregoire suspended the plan in November 2008. Proposed legislation has been introduced in the state legislature to fund the paid family leave insurance (FLI) program. H.B. 1609 and S.B. 5679 would fund the FLI program by imposing a two-cents-per-hour tax on all employees, which would cost each full-time employee approximately $40 per year.

The table provides information on the taxable wage base and withholding and contribution amounts in states requiring withholding and/or employer contributions to a state disability insurance fund. Information on California's PFL program and New Jersey's FLI program is also included.

STATE DISABILITY INSURANCE AND PAID FAMILY LEAVE REQUIREMENTS			
State	**Employer Contributions**	**Employee Contributions**	**2009 Wage Base**
California	None required; may pay all or part of employee's share up to wage base; employers electing coverage pay 2.22%. PFL program is fully funded by employee contributions.	1.1% of annual earnings up to wage base (includes cost of PFL).	$90,669 (annually)
Hawaii	Half of plan costs plus additional amounts needed to provide benefits.	0.5% of weekly earnings up to wage base ($4.39).	$877.69 (weekly)
New Jersey	Varies from 0.10% to 0.75% depending on employer's account and Temporary Disability Benefits Fund balance; 0.5% of annual earnings up to wage base for new employer. FLI program is fully funded by employee contributions.	0.5% of annual earnings up to wage base. For FLI, 0.09% (0.12%, eff. 1-1-10) of annual earnings up to wage base (in addition to TDI employee contribution rate).	$28,900 (annually)
New York	Employer allowed, but not required, to collect contributions from employees to offset cost of providing benefits.	0.5% of weekly earnings up to maximum of 60 cents.	$120 (weekly)
Puerto Rico	0.3% of annual earnings up to wage base.	0.3% of annual earnings up to wage base.	$9,000 (annually)
Rhode Island	None required; may pay all or part of employee's share.	1.5% of annual earnings up to wage base.	$56,000 (annually)

MISCELLANEOUS STATE PAYROLL TAXES

NEVADA MODIFIED BUSINESS TAX

Nevada does not have a state income tax. However, it has a gross payroll tax that has been in effect since October 1, 2003. It replaced the state business tax, which had been $25 per employee each quarter (i.e., $100 per employee annually). The Modified Business Tax is based on a percentage of an employer's gross payroll after deductions for employer-provided health insurance benefits.

Covered employers. Every employer that is subject to the Nevada Unemployment Compensation Law, except for non-profit organizations, Indian Tribes, and political subdivisions. Out-of-state employers that send employees to Nevada to work, but report those employees' wages to states other than Nevada for unemployment insurance purposes, are not required to report or pay the tax for those employees since their wages are not required to be reported to the Nevada Employment Security Division.

Tax rate. The tax is assessed on an employer's total gross wages less a qualified deduction for employee health insurance benefits paid by the employer. The tax rate is 0.63% for most employers; the rate for financial institutions is 2%.

Returns and payments. Quarterly returns and payments are due by the last day of the month following each quarter. General businesses must file Form TXR-020.01, *Modified Business Tax Return – General Business.* Financial institutions must file Form TXR-021.01, *Modified Business Tax Return – Financial Institutions.* Mail returns and payments to: Nevada Department of Taxation, P.O. Box 52674, Phoenix, AZ 85072-2674.

Recordkeeping. Employers must keep records to determine the amount of the tax liability for 4 years. Records must be available for inspection by the Department upon demand at reasonable times during regular business hours.

Penalties. Late payment penalty is 10% of the net tax due. Interest is 1% of net tax due for each month past due. The Department may, for good cause, grant a 30-day extension upon written application by the employer before payment due date (interest will still apply).

Failure to maintain proper records is a misdemeanor.

An employer that intends to evade the tax by filing a false or fraudulent return or making a false record entry is guilty of a gross misdemeanor.

Registration. Employers doing business in Nevada must obtain a State Business License. The cost is $100. The license must be renewed annually and the renewal fee is $100. Mail the *Nevada Business Registration* form (download at http://tax.state.nv.us/forms.htm#busforms) or apply online at https://www.nevadatax.nv.gov/web.

Contact information. Nevada Department of Taxation, 1550 College Parkway, Suite 115, Carson City, NV 89706, Phone: 775-684-2000, Fax: 775-684-2020, Web site: http://tax.state.nv.us.

NEW HAMPSHIRE BUSINESS ENTERPRISE TAX

Like Nevada, New Hampshire does not have a state income tax. New Hampshire employers may be subject to a Business Enterprise Tax. This tax is assessed, in part, on the sum of all compensation paid.

Covered employers. Employers operating in New Hampshire that have more than $150,000 of gross receipts from all activities, or an enterprise value tax base of more than $75,000.

Tax rate. A 0.75% tax is assessed on the enterprise value tax base, which is the sum of all compensation paid or accrued, interest paid or accrued, and dividends paid by the business enterprise, after special adjustments and apportionment.

Compensation subject to tax includes: wages subject to federal income tax withholding; contributions on behalf of employees to qualified pension, profit-sharing, and stock bonus plans; contributions on behalf of employees to annuity or deferred-payment plans; fringe benefits provided to and included in gross income of employees for federal income tax purposes; and imputed income on a below market compensation related loan between employer and employee.

Returns and payments. Returns are due on the 15th day of the third, fourth, or fifth month following the end of the taxable period depending on the type of employer. "Taxable period" means the calendar or fiscal year which the business uses for federal income tax purposes or financial purposes (if not required to file a return for federal income tax purposes):

- Corporate and combined returns are due on the 15th day of the third month following the end of the taxable period.
- Proprietorship, partnership, and fiduciary returns are due on the 15th day of the fourth month following the end of the taxable period.
- Non-profit returns are due on the 15th day of the fifth month following the end of the taxable period.

Corporations, partnerships, fiduciaries, and non-profit organizations must file using Form BET, *Business Enterprise Tax Return for Corporations, Partnerships, Fiduciaries and Non-Profit Organizations.* Attach Form BET-80, *Business Enterprise Tax Apportionment.*

Combined business enterprises are required to file on a combined basis using Form BET-WE, *Business Enterprise Tax Return for Combined Groups.* Attach Form BET-80-WE, *Business Enterprise Tax Apportionment for Individual Nexus Members of a Combined Group.*

Proprietorships must file using Form BET-PROP, *Business Enterprise Tax Return for Proprietorships.*

All businesses must also file BT-SUMMARY, *Business Tax Summary.*

Automatic 7-month extension to file returns if employer pays 100% of tax determined to be due. Form BT-EXT, *Payment Form and Application for 7 Month Extension of Time to File Business Tax Return,* must be filed if employer has not paid 100% of tax liability.

Estimated payments are required if the employer's estimated tax liability exceeds $200. Payments must be made in four installments of 25% each and are due on the 15th day of the fourth, sixth, ninth, and twelfth months of the taxable period.

Make payments online at www.nh.gov/revenue (click "Access e-file DRA" link).

Recordkeeping. Employers must keep records to determine the amount of the tax liability for 5 years. Records must be available for inspection by the Department upon demand at reasonable times during regular business hours.

Penalties. Late filing penalty is 5% of the amount of tax due or $10, whichever is greater, for each month or part of a month during which the return remains unfilled. The total penalty may not exceed 25% of the amount of tax due or $50, whichever is greater.

Late payment penalty is 10% of the amount of nonpayment or underpayment. If failure to pay is due to fraud, the penalty is 50% of the amount of nonpayment or underpayment.

The penalty for a substantial understatement of the tax is 25% of the amount of the underpayment. There is a "substantial understatement" of tax if the amount of the understatement exceeds the greater of 10% of the tax required to be shown on the return for the taxable period or $5,000.

Interest will be charged on amounts that are not paid when due. The interest for 2009 is 7%.

Failure to maintain proper records is a misdemeanor.

Registration. Employers doing business in New Hampshire must register with the New Hampshire Secretary of State's Office, Corporation Division. Depending on the business structure, the employer may have additional filing requirements. Download the forms required to register a business at www.sos.nh.gov/corporate/Corpforms.html. Mail completed forms to: Corporation Division, Department of State, 107 N. Main St., Concord, NH 03301-4989, Phone: 603-271-3246, E-mail: corporate@sos.state.nh.us.

Contact information. New Hampshire Department of Revenue Administration, 109 Pleasant Street, Concord, NH 03301, Phone: 603-271-2191, Fax: 603-271-6121, Web site: www.nh.gov/revenue.

Headquarters located outside of New York. Corporation B has 15,000 employees. Employee D is a nonresident of New York State. Employee D occasionally travels to New York to perform services. On January 2, 2003 Employee D submits an IT-2104.1 to his employer estimating the percentage of services performed in New York as 10%. . Corporation B accepts the IT-2104.1 and has no actual knowledge or reason to know it is incorrect and withholds on 10% of the employee's wages. The actual percentage of services performed in New York for calendar year 2003 was 20%. The amount of tax underwithheld is not the responsibility of the employer. If the employer is audited, no adjustment for tax, penalty or interest for the under withholding on Employee D will be assessed. The auditor should advise the employer that in the past the IT-2104.1 submitted by Employee D was not accurate and the employer should ask Employee D for a new IT-2104.1 if it is appropriate.

Employee G is a nonresident employee assigned to Corporations E's New Jersey office. On January 2, 2003 Employee G submits an IT-2104.1 to her employer estimating the percentage of services performed in New York as 25%. On June 1, 2003 Employee G changed her work location to New York and changed her job title. Employees in her new job title and new job location typically perform 95% of their services in New York. Employee G does not submit a new IT-2104.1 to her employer. The change in work location and job title are recorded in Corporation E's records. The employer must adjust Employee G's withholding, since Corporation E has actual knowledge the IT-2104.1 on file is not correct. If the employer has adequate records to determine the proper amount of tax to be withheld, the withholding on Employee G may be adjusted to this amount; in the absence of adequate records, withholding must be adjusted to 100%. If Corporation E continues to rely on and withhold based on the IT-2104.1 on file, Corporation E would be liable for any additional tax, penalty or interest on Employee G's underwithholding.

Individual employees are responsible to properly compute their respective New York source income on their New York State IT-203 personal income tax returns. In situations where the employer has withheld pursuant to an IT-2104.1 and did not have actual knowledge or reason to know it is incorrect, and the auditor knows or suspects the percentage is not correct, the auditor should view the New York State wage allocation on the employee's personal income tax return. If the auditor feels the individual is not properly allocating the wages to New York, an individual audit case should be created.

The IT-2104.1 and the Audit Process - it has been our experience on audit that most employers do not make extensive use of Form IT-2104.1 and in general will withhold based on the employee's work location. The review of Form IT-2104.1 and its significance in the audit process has been minimal to date. Under the new policy the auditor may begin to encounter employers who have on file large numbers of Form IT-2104.1. If this is the case, the auditor will have to include the review of Form IT-2104.1 in the audit plan.

The employer should be asked how the IT-2104.1 process works. If the employer states that employees are sent a yearly reminder to file an IT-2104.1, these forms are then sent directly to payroll where a clerk enters them into the payroll system, and the payroll clerks enter all IT-2104.1's into the system without any checks or edits, this would be an example of a system where the employer has little or no control over the IT-2104.1 process. The auditor would then have to carefully review the IT-2104.1's to verify that they are accurate and that the employer did not rely on IT-2104.1 forms which the employer had actual knowledge or reason to know were not correct.

The auditor should ask the employer to provide a listing of all employees with IT-2104.1's on file and a listing of each employee's job title and work location. If an EDP audit is being conducted, this information can be obtained in electronic format. The auditor will then be provided a report showing all employees that completed an IT-2104.1, as well as each employee's work location and job title. These reports, in conjunction with other information obtained from the employer, will allow the auditor to verify whether the employer relied on IT-2104.1's which they had actual knowledge or reason to know were incorrect. An employer cannot claim it does not have actual knowledge or reason to know if the business does not have a system in place to verify that the IT-2104.1's received from employees are accurate.

If the auditor determines certain IT-2104.1 forms were accepted, and the employer had actual knowledge or reason to know they were not correct, the auditor should assess any additional tax, penalty and interest against the employer.

If an employer documents to the auditor it has in place a system where it takes certain steps to verify the accuracy of completed IT-2104.1 forms, and the auditor determines this system is functioning properly, the amount of time spent auditing this issue can be reduced. For example, the employer has a system in place where, after an IT-2104.1 is submitted, the employee's supervisor is notified, is given a brief description of the significance of the form, how the form should be used, and the supervisor is asked to verify and approve the IT-2104.1. The employer also has in place a system where, whenever an employee changes work location or job title or any other significant change in the employees work assignment, they are required to fill out a new IT-2104.1. Further, the employer also has in place a system where, when an employee notifies the employer of a new address and the new address indicates a change of residence from nonresident to resident status, withholding is adjusted to reflect the change in residence status. The more systems and checks the employer has in place to make sure the IT-2104.1 process is working properly, and the greater the application of the employers actual knowledge about employee working percentages in New York to the IT-2104.1 process, the less time the auditor will have to spend examining this issue.

The actual knowledge or reason to know tests should be administered in a reasonable manner, taking into account the facts and circumstances of each employer. In some instances, it would not be reasonable for an employer's payroll department to have knowledge of all the facts and circumstances that are possessed by the company as a whole as it relates to the work location of an individual nonresident employee.

As previously noted, in situations where the employer has accepted an IT-2104.1 and had no actual knowledge or reason to know it was or became incorrect, and the auditor knows or suspects the percentage is not correct, the auditor should review the employee's personal income tax return. If the auditor feels the individual is not properly allocating wages, an individual audit case should be created.

The actual knowledge or reason to know standard will also apply to separate IT-2104.1's submitted for withholding on stock options and deferred compensation amounts.

An auditor may find that an employer under audit has implemented a time and attendance system and does not make use of Form IT-2104.1 for all or some of its nonresident employees who perform services both within and without New York. A time and attendance system requires employees to specify where they are performing services on a daily basis. This information becomes part of the payroll system and allows the employer to do extremely accurate withholding on nonresident employees who perform services both within and without New York. This type of system can be very useful when employers have employees whose work schedule is highly variable, such as a consultant who works in multiple states on an as needed basis. If an employer utilized an IT-2104.1 for such an employee in lieu of a time and attendance system, the employer would be put into the position where it has to continually get a new IT-2104.1 for every significant change in work assignment. If an auditor encounters a time and attendance system on audit and the auditor has determined the system is well designed and is functioning properly the auditor can reduce the amount of time spent auditing the issue of withholding on nonresident employees who perform services both within and without New York. It should be noted an employer may withhold on nonresident employees who perform services both within and without New York based on an IT-2104.1, or based on adequate records. In the case of an employer who uses a time and attendance system for all or some of their nonresident employees who perform services both within and without New York the employer has chosen the adequate record method for the employees using the time and attendance system and should not accept an IT-2104.1 from these employees as it relates to income earned and paid in the current period.

Nonresident withholding on income earned in one year and paid in a later year: **Deferred Compensation, Stock Options and other income** – As stated previously, the audit division has adopted a new policy concerning the withholding requirements for employers who have nonresident employees that perform services both inside and outside New York State. This new policy also affects nonresident withholding on income earned in one year and paid in a later year. This new policy is effective as of the date of issuance of these guidelines, and should be incorporated into all open audits.

In determining the proper amount of wages subject to New York State withholding, an employer may rely on the guidance below for stock options, deferred compensation, bonus or any other income earned in one year and paid in a later year.

If all or part of the deferred compensation or stock option income that is considered wages for federal purposes are attributable to services performed in New York, the employer will be required to withhold on 100% of the compensation unless one of the following applies:

(1) The employee furnishes the employer with Form IT-2104.1 for the deferred compensation or stock options reflecting the proper allocation for the income; or

(2) The employer has an IT-2104.1 on record for the employee for the current year, and the employee is still being paid compensation for services currently being performed in New York State and the deferred compensation or stock option is less than $1,000,000 for the payroll period. In this case, the employer may withhold using the employee’s estimated percentage of services performed for the current year; or

(3) The employee is no longer performing services in New York State or is no longer employed by the employer, and the deferred compensation or stock option is less than $1,000,000 for the payroll period. In this case, the employer may withhold using the employee’s estimated percentage of services contained on the last IT-2104.1 submitted by the employee, in which the employee estimated a percentage of services performed in New York of greater than zero percent. (A prior IT-2104.1 submitted pursuant to (1) above for the specific purpose of

New York State Department of Taxation and Finance

New York State, City of New York, and City of Yonkers Certificate of Nonresidence and Allocation of Withholding Tax

IT-2104.1
(9/08)

Employee: Complete this form and return it to your employer. If you become a New York State, New York City, or Yonkers resident, or you substantially change the percentage of services performed within New York State or Yonkers, you must notify your employer within 10 days. A penalty of $500 may be imposed for furnishing false information that decreases the withholding amount.

Employee's first name and middle initial	Last name	Social security number	**Employer's** name		
Street address			Street address		
City	State	ZIP code	City	State	ZIP code

Mark an *X* in the appropriate boxes below:

(See definitions for *resident, nonresident,* and *part-year resident* on the back of this form.)

Part 1 — New York State

☐ I certify that I am not a resident of New York State and that my residence is as stated above.

☐ I estimate that ______ % of my services during the year will be performed within New York State and subject to New York State withholding tax.

Part 2 — New York City

☐ I certify that I am not a resident of New York City and that my residence is as stated above.

Part 3 — Yonkers

☐ I certify that I am not a resident of Yonkers and that my residence is as stated above.

☐ I estimate that ______ % of my services during the year will be performed within Yonkers.

I will notify my employer within 10 days of any change in the percentage of my services performed within New York State or Yonkers, or of a change in my status from nonresident to resident of New York State, New York City, or Yonkers.

Employee's signature	Date

Employer: You must withhold the applicable amount of New York State, New York City, or Yonkers tax from wages (or from the percentage of wages shown above) paid to employees who file this certificate. **Keep this certificate with your records. You must keep this certificate and have it available for inspection by the Tax Department.**

Resident and *nonresident* defined

To determine whether or not you are a resident of New York State, New York City, or Yonkers, you must consider your domicile and permanent place of abode. In general, your *domicile* is the place you intend to have as your permanent home. A *permanent place of abode* is a residence (a building or structure where a person can live) you permanently maintain, whether you own it or not, and usually includes a residence your husband or wife owns or leases.

Resident

New York State resident — You are a New York State resident if:

1. Your domicile is not New York State but you maintain a permanent place of abode in New York State for more than 11 months of the year and spend 184 days or more (any part of a day is a day for this purpose) in New York State during the taxable year. However, if you are a member of the armed forces, and your domicile is not New York State, you are not a resident under this definition; **or**

2. Your domicile is New York State. However, even if your domicile is New York State, you are not a resident if you meet **all three** of the conditions in either Group A or Group B as follows:

   Group A

   1. You did not maintain any permanent place of abode in New York State during the tax year, **and**
   2. you maintained a permanent place of abode outside New York State during the entire tax year, **and**
   3. you spent **30 days or less** (any part of a day is a day for this purpose) in New York State during the tax year.

   Group B

   1. You were in a foreign country for at least 450 days during any period of 548 consecutive days, **and**
   2. you spent **90 days or less** (any part of a day is a day for this purpose) in New York State during this 548-day period, and your spouse (unless legally separated) or minor children spent **90 days or less** (any part of a day is a day for this purpose) in New York State during this 548-day period in a permanent place of abode maintained by you; **and**
   3. during the nonresident portion of the tax year in which the 548-day period begins, and during the nonresident portion of the tax year in which the 548-day period ends, you were present in New York State for no more than the number of days that bears the same ratio to 90 as the number of days in such portion of the tax year bears to 548. This condition is illustrated by the following formula:

$$\frac{\text{number of days in the nonresident portion}}{548} \times 90 = \text{maximum days allowed in New York State}$$

To determine if you are a New York City or Yonkers resident, substitute *New York City* or *Yonkers,* whichever is applicable, for *New York State* in the above definition.

Nonresident and part-year resident

You are a *nonresident* if you do not meet the above definition of a resident. You are a *part-year resident* if you meet the definition of resident or nonresident for only part of the year.

Percent of services

The percent of services performed in New York State or Yonkers may be computed using days, miles, time, or similar criteria. For example, an individual working in New York State two out of five days for the entire year performs 40% of his or her services in New York State.

Privacy notification

The Commissioner of Taxation and Finance may collect and maintain personal information pursuant to the New York State Tax Law, including but not limited to, sections 5-a, 171, 171-a, 287, 308, 429, 475, 505, 697, 1096, 1142, and 1415 of that Law; and may require disclosure of social security numbers pursuant to 42 USC 405(c)(2)(C)(i).

This information will be used to determine and administer tax liabilities and, when authorized by law, for certain tax offset and exchange of tax information programs as well as for any other lawful purpose.

Information concerning quarterly wages paid to employees is provided to certain state agencies for purposes of fraud prevention, support enforcement, evaluation of the effectiveness of certain employment and training programs and other purposes authorized by law.

Failure to provide the required information may subject you to civil or criminal penalties, or both, under the Tax Law.

This information is maintained by the Director of Records Management and Data Entry, NYS Tax Department, W A Harriman Campus, Albany NY 12227; telephone 1 800 225-5829. From areas outside the United States and outside Canada, call (518) 485-6800.

Need help?

Internet access: *www.nystax.gov*
Access our Answer Center for answers to frequently asked questions; check your refund status; check your estimated tax account; download forms, publications; get tax updates and other information.

Fax-on-demand forms: Forms are available 24 hours a day, 7 days a week. 1 800 748-3676

Telephone assistance is available from 8:00 A.M. to 5:00 P.M. (eastern time), Monday through Friday.

Refund status:	1 800 443-3200
(Automated service for refund status is available 24 hours a day, 7 days a week.)	
To order forms and publications:	1 800 462-8100
Personal Income Tax Information Center:	1 800 225-5829
From areas outside the U.S. and outside Canada:	(518) 485-6800

Text Telephone (TTY) Hotline (for persons with hearing and speech disabilities using a TTY): If you have access to a TTY, contact us at 1 800 634-2110. If you do not own a TTY, check with independent living centers or community action programs to find out where machines are available for public use.

Persons with disabilities: In compliance with the Americans with Disabilities Act, we will ensure that our lobbies, offices, meeting rooms, and other facilities are accessible to persons with disabilities. If you have questions about special accommodations for persons with disabilities, please call 1 800 225-5829.

H.R. 2110
The Mobile Workforce State Income Tax Fairness and Simplification Act

<u>Problem</u>

- States currently have widely varying and inconsistent standards regarding the requirements:
    - for *employees* to file personal income tax returns when traveling to a nonresident state for temporary work periods; and,
    - for *employers* to withhold income tax on employees who travel outside of their state of residence for temporary work periods.

- Employees who travel outside of their state of residence for business purposes are subject to onerous administrative burdens because, in addition to filing federal and resident state income tax returns, they may also be legally required to file an income tax return in every other state into which they traveled, *even if they were there for only one day*.

- Employers are required to incur extraordinary expenses in their efforts to comply with the states' widely divergent withholding requirements for employees' travel to nonresident states for temporary work periods.

- According to the Federation of Tax Administrators, "Complying with the current system is…indeed difficult and probably impractical."[1]

<u>Solution</u>

- H.R. 2110 provides for a uniform, fair and easily administered law and would ensure that the correct amount of tax is withheld and paid to the states without the undue burden that the current system places on employees and employers.
    - Consistent with current law, H.R. 2110 provides that an employee's earnings are subject to full tax in his/her state of residence.
    - In addition, under H.R. 2110, an employee's earnings would be subject to tax in the state(s) within which the employee is present and performing employment duties for more than 30 days during the calendar year.

- Employees who perform employment duties in a nonresident state for more than 30 days are subject to tax—and employers are subject to withholding— in the nonresident state from the commencement of the employees' duties in the nonresident state.

- Certain uncommon types of employees, including professional athletes, professional entertainers, and certain public figures are not covered by this bill and remain subject to each state's laws.

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[1] Statement of Harley Duncan before the House of Representatives Committee on the Judiciary, Subcommittee on Commercial and Administrative Law, November 1, 2007.

H.R. 2110
Mobile Workforce State Income Tax Fairness and Simplification Act

Description of Statutory Language

- **Employees Subject to Tax on All Wages in State of Residence.** All wages and other remuneration earned by an employee are subject to the income tax laws in the state of the employee's residence.

- **Uniform Rule for Taxation by Nonresident States.** Wages and other remuneration are also subject to tax in the state(s) within which the employee is present and performing duties for more than 30 days in a calendar year.

- **Exclusions from Uniform Rule.** The 30-day threshold does not apply to employees who are professional athletes, professional entertainers, or certain public figures who give speeches or make similar type appearances and are paid on a per-event basis.

- **Recordkeeping.** An employer may rely on an employee's determination of the time spent in a nonresident state absent knowledge of employee fraud or collusion between the employer and employee.

    - If an employer, at its discretion, maintains a time and attendance system tracking where employees perform their services on a daily basis, such system shall be used instead of the employee's determination.

- **Definitions.** An employee will be considered present performing duties in a state if the employee performs the preponderance of his or her duties in such state for such day.

    - If an employee performs material employment duties in a resident state and one nonresident state during one day, such employee will be considered to have performed the preponderance of his or her duties in the nonresident state for such day.

    - The terms "employee" and "wages or other remuneration" shall be defined by the state in which the employment duties are performed.

- **Effective Date.** The Act is effective on January 1, 2011.

Estimates of State-by-State Impacts of the Mobile Workforce State Income Tax Fairness and Simplification Act

This analysis presents state-by-state estimates of the net change in state personal income taxes projected from the impact of the Mobile Workforce State Income Tax Fairness and Simplification Act at fiscal year 2008 levels. The net impact figures for each state include two components: 1) the reduction in income tax collections due to the increase in the number of in-state days (30 days less a state's current-law day threshold) required before a nonresident employee is subject to income taxation, and 2) the increase in tax collections in resident states due to reduced credits on resident income tax returns for taxes paid by the residents to other states where they work and are taxed as nonresidents.

The bill has the following features that are important determinants of the estimated state income tax impacts:

- A nonresident employee, with limited exceptions, performing employment duties in a state for 30 days or less would not be subject to the nonresident state's personal income tax.

- An employee is considered to be performing employment duties within a state for a day if the preponderance of their employment duties for the day are within a state. If employment duties are performed in a nonresident state and a resident state in the same day, the employee is considered to be performing employment duties in the nonresident state for the day.

- The legislation would not be effective until January 1, 2011.

Table 1 provides state-by-state estimates of the change in net personal income taxes (in millions of dollars) due to the proposal. The net change for all states and the District of Columbia (-$42 million) is the sum of the revenue reduction due to reduced taxes paid by nonresident employees and increased taxes paid to resident states due to lower credits. Table 1 also reports the net change as a percent of fiscal year 2008 total state taxes.[1]

Twenty-five states have either an income tax revenue gain or no loss under H.R. 3359; another 22 states have revenue reductions less than 0.02% (two-hundreds of a percent or two-tenths of a mill) of state tax collections. As the table illustrates, the bill redistributes income taxes between resident and nonresident states with only a very slight reduction in total income taxes collected by the states. For all states combined, the net change in total taxes is only a reduction of -.01% or $42 million which accrues as a reduction in overall personal income taxes.

[1] The estimates were prepared by Ernst & Young LLP based on survey data provided by seventeen states through the Federation of Tax Administrators, as well as state tax collection data for other states from the U.S. Census *Governmental Finances* and state tax collection reports and journey-to-work data from the U.S. Census. More detailed estimates, as well as a description of the estimating methodology, are available upon request. The legislation will not affect local personal income taxes.

Table 1: Estimates of Impact of H.R. 2110, FY 2008

State	Net Change as a Percent of Total State Taxes	Net Change in Millions of Dollars
Alabama	0.01%	$0.5
Alaska	0.00	0.0
Arizona	0.01	1.3
Arkansas	0.00	-0.3
California	-0.01	-6.2
Colorado	-0.02	-1.5
Connecticut	0.02	3.1
Delaware	0.08	2.4
District of Columbia	0.00	0.2
Florida	0.00	0.0
Georgia	-0.01	-1.8
Hawaii	0.00	0.2
Idaho	0.00	0.1
Illinois	-0.02	-7.4
Indiana	0.03	3.8
Iowa	0.01	0.9
Kansas	0.00	0.3
Kentucky	-0.01	-1.3
Louisiana	-0.02	-1.7
Maine	0.00	0.1
Maryland	-0.01	-1.0
Massachusetts	-0.03	-6.9
Michigan	-0.01	-1.8
Minnesota	-0.01	-2.2
Mississippi	0.01	0.6
Missouri	0.01	1.6
Montana	0.00	-0.1
Nebraska	0.00	-0.1
Nevada	0.00	0.0
New Hampshire	0.00	-0.1
New Jersey	0.09	26.2
New Mexico	0.00	0.0
New York	-0.07	-45.2
North Carolina	-0.01	-1.6
North Dakota	0.00	-0.1
Ohio	-0.01	-1.7
Oklahoma	-0.01	-0.5
Oregon	-0.04	-2.7
Pennsylvania	-0.01	-2.2
Rhode Island	0.12	3.3
South Carolina	0.03	2.3
South Dakota	0.00	0.0
Tennessee	0.00	-0.1
Texas	0.00	0.0
Utah	-0.01	-0.7
Vermont	0.01	0.3
Virginia	-0.01	-1.3
Washington	0.00	0.0
West Virginia	-0.01	-0.4
Wisconsin	0.00	-0.4
Wyoming	0.00	0.0
Total for All States	**-0.01%**	**-$42.0**

It is important to note that the proposed law change would not apply until January 1, 2011. As shown in Table 2, there would be no fiscal impact on states for fiscal years 2009 and 2010, and only a partial-year impact (less than 50% of the annual impact) for fiscal year 2011 that, for most states, ends July 31, 2011. The full fiscal year impact will first occur in fiscal year 2012.

Table 2
Fiscal Year Impact of H.R. 2110
FY 2008 Levels of Taxes

Fiscal Year	Impact on State Income Taxes
2009	no impact
2010	no impact
2011	less than $21 million
2012	$42 million

Table 3 compares the net impact estimates for the Mobile Workforce State Income Tax Fairness and Simplification Act considered by the 110th Congress (H.R. 3359) and for the bill as introduced in the 111th Congress (H.R. 2110). As introduced in the 110th Congress, the bill included a 60-day threshold for nonresident taxation. As shown in the table, this would have reduced state net personal income tax collections by $102 million at fiscal year 2008 collection levels. The second line of the table shows that changing the threshold to 30 days in the bill introduced in the 111th Congress lowers the revenue impact by $55.6 million to a net reduction of $46.5 million. Adding the more expansive definition of a "day" worked in a nonresident state reduces the net loss further to $42 million. The combined impact of these two changes is a reduction in the states' net revenue loss by almost 60 percent compared to the bill in the 110th Congress.

Table 3
Revenue Impacts of Alternative Versions of
the Mobile Workforce State Income Tax Act

Mobile Workforce Bill Proposals	Net Impact FY 2008 Levels	Change in Net Impact
1. 60-day threshold (110th Congress)	-$102.1	
2. 30-day threshold	-$46.5	-$55.6
3. 30-day threshold and revised definition of a "day" (current bill)	-$42.0	-$4.5
Total Change in Proposal Impacts		**-$60.1**

“The Mobile Workforce State Income Tax Fairness and Simplification Act”
May 6, 2009

The employers listed below strongly support the enactment of H.R. 2110, the Mobile Workforce State Income Tax Fairness and Simplification Act, sponsored by Representative Hank Johnson.

This bill would enhance compliance with state personal income tax laws and simplify greatly the onerous burdens placed on employees who travel outside of their resident states for temporary periods and on employers who have corresponding withholding and reporting requirements.

Issue

Every work day in our country, thousands of Americans travel outside their home state on business trips for temporary periods. Most states have their own set of requirements for filing non-resident individual income tax returns and commensurate rules for employer withholding on those employees. Most individuals are not aware of this patchwork of non-resident state income tax filing rules, and many employers are required to incur extraordinary expenses to comply with withholding requirements.

Solution

The Mobile Workforce State Income Tax Fairness and Simplification Act would establish fair, administrable and uniform rules (including appropriate *de minimis* rules) to ensure that the appropriate amount of tax is paid to state and local jurisdictions without placing undue burdens on employees and their employers.

On behalf of American employers and their employees who travel for business, we request your support for this important legislation.

Sincerely,

Abercrombie & Fitch Co.
Aerospace Industries Association
Aker Solutions
Alaska Newspaper Inc.
Alliance Coal, LLC
Alcoa
Alutiiq LLC
American Eagle Outfitters, Inc.
American Express
American Payroll Association
AMS Staff Leasing
Angayuk Construction
Ann Taylor
Applied Materials
ARISE Incorporated
Associated Industries of Massachusetts
Association of Gaming Equipment Manufacturers
Association of Washington Business
BAE Systems, Inc.
Bank of America, N.A.
Bayer Corporation
Bob Evans Farms, Inc.
Business Council of New York State

Business and Institutional Furniture Manufacturers Association (BIFMA)
California Chamber of Commerce
California Taxpayers' Association
Calista Corporation
Cardinal Healthcare
Caterpillar Inc.
Ceridian Corporation
Chiulista Services Inc.
Cisco Systems
City of West Des Moines, IA
Clarus Technologies
CoAdvantage
The Coca-Cola Company
Cokala Tax Reporting Solutions LLC
Community Health Systems
Community Memorial Hospital of Menomonee Falls Inc.
Consolidated Restaurant Operations, Inc.
The Container Store
Con-way Inc.
Costco Wholesale Corporation
CTR Holdings, Inc.
Council On State Taxation (COST)
Countrywide Home Loans
Delta Air Lines, Inc.
Discovery Communications
Diocese of Buffalo, NY
Dow Chemical Company
EDS
E.I. du Pont de Nemours and Co.
Electronics for Imaging, Inc.
Elliott Davis, LLC
Emerson
Fairbanks Scales, Inc.
Federal Sources Inc.
Financial Executives International, Committee on Taxation
The Financial Services Roundtable
Four Seasons, Inc.
Franklin Resources, Inc.
Friedman's, Inc.
Frontier Systems Integrators Inc.
General Electric Company
General Motors Corporation
Georgia Chamber of Commerce
Georgia-Pacific LLC
Hall Financial Group
Hanover Direct, Inc.
Harbor America
Harry and David
HCR Manor Care
Hewlett-Packard Company
Highmark Inc.
Holiday Retirement
The Home Depot
Horizon Payroll Services
Illinois Chamber of Commerce
Indiana Chamber of Commerce
International Business Machines Corporation
International Game Technology
Iowa Association of Business and Industry
Johnson & Johnson
Kentucky Chamber of Commerce
Kimberly-Clark Corporation
Koch Industries, Inc.
Kohl's Department Stores, Inc.
Koniag Development Corporation
La Quinta Inns & Suites
Liberty Mutual Group
Limbach Facility Services LLC
Limited Brands, Inc.
Lincoln Financial Group
Lockheed Martin Corporation
Long Beach Chamber of Commerce

Louisiana Association of Business & Industry (LABI)

Lowes Companies, Inc.

Lutheran SeniorLife

Macy's, Inc.

Maryland Chamber of Commerce

MedicalEdge Healthcare Group

Michigan Chamber of Commerce

Microsoft Corp.

Middlebury College

Missouri Chamber of Commerce & Industry

Modine Manufacturing Company

Money Management International

Montana Chamber of Commerce

Montana Taxpayers Association

Morgan Stanley

Motion Picture Association of America

Mylan Inc.

National Association of Manufacturers

National Association of Tax Reporting and Payroll Management

National Retail Federation

Nebraska Chamber of Commerce & Industry

Neiman Marcus, Inc.

Nevada Taxpayers Association

New Jersey Chamber of Commerce

North Carolina Chamber

Ohio Chamber of Commerce

Oldcastle Glass, Inc.

Organization for International Investment

Pennsylvania Chamber of Business & Industry

Pennsylvania Software of Virginia, Inc.

PepsiCo, Inc.

Perot Systems

Pfizer Inc.

Pitt Ohio Express, LLC

Pro-Factors, Inc.

Roche Diagnostics Corporation

Rohm and Haas Company

Sempra Energy

Sephora

Sikich LLP

South Carolina Chamber of Commerce

The State Chamber of Oklahoma

SynQ Solutions, Inc.

SYSCO Corporation

Teledyne Continental Motors

Telerx Marketing

Time Warner

Time Warner Cable

The TJX Companies Inc.

Town of Hopkinton, NH

Townsend and Townsend and Crew LLP

Transervice Logistics Inc.

Tunista Inc.

Turner Broadcasting System, Inc.

United Technologies Corporation

US Chamber of Commerce

Vilter Manufacturing LLC

Vermeer Mfg. Co.

Visa Inc.

Vulcan Materials Company

The Walt Disney Company

Washington Management Group

Wells Fargo & Company

Westinghouse Electric Company

XMCO

Yulista Management Services Inc.