19th Annual Midwest Regional Payroll Conference

Multi-State Taxation

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Your instructors

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Multi-State Taxation

- Historically most employees lived in the same state they worked in
- Over the past 20-30 years business travel has become more mainstream
- States are looking for untapped revenue sources, therefore, enforcing existing statutes
- Most employer’s either elected not to address nonresident withholding or established their own de minimis thresholds (60-90 days within jurisdiction)

Multi-State Taxation

Questions Facing Employers

- Where to withhold?
- Do reciprocal agreements affect withholding?
- How are wages defined in nonresident states?
- Do nonresident states require separate Form W-4 or certificates?
- Are current payroll systems able to handle nonresident withholding?
- Federal intervention?

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General Payroll Withholding Rules

- Where services are performed
  - De minimis standards
    - Most states do not have a statutory de minimis threshold
    - Days in threshold (AZ – 60 days, HI – 60 days, ME – 20 days & NM – 16 days)
    - Dollar threshold (GA - $5,000, ID - $1,000 & OK - $300 per quarter)
- Residency if reciprocity agreement exists
  - Generally exempts a nonresident from taxation in the state where services are performed
  - May not require employer withholding in resident state (Nexus)
  - Does not generally apply to local tax withholding

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Where to Withhold - continued

- Resident/nonresident taxation
  - Residency Test
    - Being domiciled in the state, or
    - Spending more than a certain number of days in the state
  - Dual residence
  - Nexus (Literally means “connection”)
  - Courtesy withholding
- Telecommuting
  - Convenience v. necessity
  - Potential double taxation

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Wages Defined

- Wages defined so “broadly” (includes all forms of compensation)
  - Income producing (wages, bonuses, etc.)
  - Managerial and administrative
  - Seminars
  - Vacation/PTO
- Wages paid years after employee actually performed services (nonqualified deferred comp, taxable fringe benefits, stock based comp, etc.)
  - State sourcing rules

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Equity Compensation State Sourcing Rules

- Where services were performed
  - Upon grant, where was the employee working
  - From grant to exercise, where was the employee working
  - From exercise to sale, where was the employee working
- State of residency
  - Not necessarily 'home' state
  - Resident by either being domiciled in the state or spending more than a certain number of days in the state (183)

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Equity Compensation State Sourcing Rules - continued

- Reciprocity
  - Allows withholding in state of residence instead of where services were performed
- Resident/nonresident taxation policy
  - May need to consider laws of two or more states
  - Potential dual withholding requirement
- Administrative feasibility

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Form W-4

- Not all states accept Form W-4
- Many states limit the number of withholding allowances by nonresidents
- State nonresident allocation forms (e.g. Missouri Form MO W-4A, New York Form IT-2104.1)
- State reciprocal agreement forms (Virginia Form VA-1)

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Unemployment Taxes

- Four-Part Test
  - Localization of services
  - Base of operations
  - Place of direction and control
  - Residence
- No Reciprocal Agreements

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Business Travel Expenses

- Away from home' and 'temporary'
  - Overnight from principal place of residence
  - No longer than 1 year (realistic expectation)
    - Realistically expected to last 1 year or less
    - Expected to last more than 1 year
    - Realistic expectation change
- Generally taxable to nonresident state

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Human Resources Issues

- Who will pay any additional tax?
  - Tax Equalization
- Common methods for gross-up
  - Analysis of individual tax filings
  - Flat percentage
  - When to gross-up?
    - Beginning of the year
    - End of the year
    - Include FICA in gross-up (highly compensated employees)

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Human Resource Issues - continued

- What are employers doing about employees state tax filing obligations?
  - Flat dollar amount per state
  - Pay for use of personal accountant
  - Pay for TurboTax
  - Provide no tax filing assistance to employee

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System Limitations

- Accommodate pay period allocations by jurisdictions
  - Time & Attendance systems may not provide for multi-jurisdictional reporting within pay period
  - May only allow withholding to one jurisdiction per pay period
  - Many systems do not allow for storage of jurisdictional allocation percentages
  - Systems are not programmed to handle tax equalization and gross-ups

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Federal Intervention - Remote and Mobile Worker Relief Acts

- S. 1274, Introduced April 21, 2021 (Dead)
- S. 602, Introduced February 28, 2019 (Dead)
- H.R. 1393, Introduced March 7, 2017 (Dead)
- H.R. 1129, Introduced March 13, 2013 (Dead)
- H.R. 1864, Introduced May 12, 2011 (Dead)
- H.R. 2110, Introduced April 27, 2009 (Dead)
- State issues with federal intervention
  - Thresholds are to high
  - Separate carve-out for highly compensated individuals
  - Infringement of state's rights

THANK YOU FOR YOUR TIME AND ATTENTION

QUESTIONS AND ANSWERS