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Payroll Insights

Employment tax news to guide you now and for the future

September 2021

John Montgomery's Fresh Take: New Jersey

According to the New Jersey Division of Taxation's COVID-19 Teleworking Guidance updated on August 3, 2021, the temporary relief period with respect to employer withholding tax for teleworking employees will end on October 1, 2021. As such, effective October 1, 2021, employers should cease sourcing income in accordance with the employer's jurisdiction. Employees working remotely outside of New Jersey should now have wages reported and taxes withheld to the state where they are physically performing services, as required under the pre-pandemic rules. Note, if the employer's jurisdiction has telecommuting/convenience of the employer rules (e.g., Delaware, Nebraska, New York, and Pennsylvania), there may be further implications to consider with respect to wage sourcing.

During the temporary relief period, employers could allocate wages and withheld taxes to the employer's jurisdiction without updating employees' work states in their payroll systems if employees were working temporarily in other states.

With this return to the pre-pandemic employer withholding requirements, if you are not an employer registered for payroll in these jurisdictions, it is time to get ready to handle the complexity of payroll compliance for your mobile workforce.

New Jersey employers may face $250M unemployment insurance tax hike

New Jersey Department of Labor and Workforce Development (DOL) posted information about unemployment insurance tax rates for fiscal year 2021 – 2022. The DOL is using Tax Table C for 2021-2022 which indirectly implies a $250 million increase for employers in the state according to New Jersey Business and Industry Association (NJBIA). NJBIA expects that the higher rates will take effect October 1, 2021 to replenish the state's unemployment trust fund.

According to the DOL's spokeswoman Angela Delli Santi, employers can expect to begin paying higher unemployment insurance taxes when they file their quarterly reports and remit taxes by October 30, 2021.

On August 16, Senator Troy Singleton sent a letter to Governor Murphy urging him to offset the $250 million increase by using a portion of New Jersey's federal relief funds. As of date of this publication, no official response has been received from the Governor and/or the NJDOL.

IRS issued gross receipts safe harbor for employee retention credit

The Department of the Treasury (Treasury) and the Internal Revenue Service (IRS) issued a safe harbor allowing employers to exclude certain items from their gross receipts solely for determining eligibility for the Employee Retention Credit (ERC).

Revenue Procedure 2021-33 provides a safe harbor permitting employers to exclude certain items from gross receipts in determining eligibility for the ERC. These items include:

- The amount of the forgiveness of a Paycheck Protection Program (PPP) Loan;
- Shuttered Venue Operators Grants under the Economic Aid to Hard-Hit Small Businesses, Non-Profits, and Venues Act; and
- Restaurant Revitalization Grants under the American Rescue Plan Act of 2021.

An employer elects to apply the safe harbor by excluding these amounts solely for determining whether it is an eligible employer for a calendar quarter for purposes of claiming the ERC on its employment tax return.

The guidance requires employers to apply the safe harbor consistently for determining eligibility for the ERC. Employers must exclude the amounts from their gross receipts for each calendar quarter in which the receipts are relevant to determining eligibility to claim the ERC. The employer claiming the credit must also apply the safe harbor to all employers treated as a single employer under the aggregation rules.

An employer is not required to apply this safe harbor and the safe harbor does not permit the exclusion of these amounts from gross receipts for any other federal tax purpose.

This safe harbor applies for purposes of determining eligibility to claim the ERC for wages paid after March 12, 2020, and before January 1, 2022.

Louisiana provides threshold for nonresident income tax withholding

Under SB 157, which was signed by Governor Edwards, effective January 1, 2022, Louisiana employers are not required to withhold state income tax from wages paid to nonresidents for services performed within the state if they work within the state for 25 or fewer days in a calendar year.

Currently, employers must withhold for all nonresidents regardless of the number of days worked in Louisiana. Louisiana does not have reciprocal withholding agreements with any states.

If the number of workdays exceeds the 25-day threshold, employers are required to withhold and remit tax to the state for every day in the calendar year, including the first 25 days during which the nonresident employee performed services in the state.

The guidance does not apply to certain nonresident individuals including professional athletes, professional entertainers, public figures, qualified production employees, and staff members of professional athletic teams.

New Hampshire implements voluntary family-leave insurance program

H.B. 2, signed by New Hampshire Governor Sununu, establishes a voluntary paid leave program for New Hampshire employees. The voluntary program, called the Granite State Paid Family Leave Plan, provides wage replacement benefits at 60% of an employee's average weekly wage for up to 6 weeks per year, with no minimum duration required.

Eligible employees of employers who participate in the program can utilize the leave for:

— The birth of a child of the employee, within the past 12 months;

— The placement of a child with the employee for adoption or fostering, within the past 12 months;

— Care for an employee's family member with a serious health condition; or

— Care for a spouse, child, or parent who is in the military.

Employers with more than 50 employees that opt-in to the voluntary program should arrange payroll deductions. Procedures for payroll deductions and remittances will be established by the Commissioner of the Department of Administrative services. For employers with fewer than 50 employees, payroll deduction is not required, and coverage may be purchased by making premium remittances into a family-leave insurance premium fund.

A tax credit equal to 50% of the premium that the employer paid for coverage is available to employers that opt-in to the program.

A Request for Proposal process begins no later than March 31, 2022 and coverage for employees should begin on January 1, 2023. Employment Tax practice will continue to monitor this program and will provide updates as more information is released.

Virginia provides unemployment benefit charge relief to employers

H.B. 7001, signed by Virginia Governor Northam, relieves employers from COVID-19 related benefit charges in determining unemployment tax rates for 2022.

For purposes of the unemployment tax rate calculation, COVID-19 related claim activity is defined as all regular unemployment insurance claims activity from April 1, 2020, through June 30, 2021. Unemployment tax rates for 2022 may be less than, but may not exceed the established rate for calendar year 2021.

Seattle creates new requirements for independent contractors

Effective September 1, 2022, businesses engaging independent contractors in Seattle are subject to labor standards established in the provisions of Ordinance 126373.

The regulation requires businesses utilizing independent contractors to provide written pre-contract disclosures, timely payment, and payment disclosures.

And, just so you know…

As of August 16, the outstanding unemployment insurance loans obtained from the federal government by the states total $53,848,130,757.07. That's enough money to keep 1,037,216 individuals employed for an entire year at the US average salary rate of $51,916.27. California is the biggest draw with $23,505,633,405 with New York running a distant second at $9,686,178,584.05

Meet your Employment Tax Professional: Brian Yu

Brian is a Manager in KPMG's Employment Tax practice based in McLean, VA with over 6 years of employment tax experience. As a Certified Public Accountant, Brian focuses on federal, state, and local payroll and payroll tax areas. He enjoys assisting his clients by providing them with guidance on payroll reporting and taxability requirements, including fringe benefits and amended return filings.

Brian lives in Fairfax, VA. Prior to the pandemic, he enjoyed traveling. Over the past year, he has been able to focus on some of his favorite socially distanced activities such as fishing and spending time outdoors with his dog, Coco.

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