Payroll Insights

Employment tax news to guide you now and for the future

August 2023

John's *fresh take*: New Jersey fights back on nonresident withholding issue

The New Jersey Senate and Assembly passed Assembly Bill 4694 on June 30, 2023 and was signed by the Governor on July 21, 2023.

Bill 4694 creates a "convenience of the employer" doctrine for employees of New Jersey based companies that reside in other states. The bill would establish a convenience of the employer doctrine for NJ non-resident employees who reside in a state that also has a convenience doctrine (Connecticut, Delaware, Nebraska, and New York). Under this doctrine, any employee with a New Jersey based office that they go to or report to, would be taxed in New Jersey for days they work remotely rather than in the office. Although Pennsylvania also has a convenience doctrine in place, the legislation would not affect New Jersey's reciprocal tax agreement with Pennsylvania, under which compensation paid to Pennsylvania residents employed in New Jersey is not subject to New Jersey income tax.

This new law will be retroactive to January 1, 2023. For employers with NJ based employees that reside in one of the states listed above, this could cause reporting and withholding amendments for the 2023 calendar year in order to properly source wages and taxes to New Jersey and ensure Forms W-2 are filed accurately at the end of the year.

Federal Updates

App-based company offers model that would allow multiple employer contributions

Leading app-based companies like Lyft, Uber, and DoorDash are pushing lawmakers to establish a federal system that would grant independent contractors access to workplace benefits they currently lack. This marks the first time these companies have agreed on a national approach to provide essential benefits, including health insurance, retirement savings, and paid leave, to contractors who are vital to their operations. The industry group Flex has proposed a framework that suggests app-based companies contribute a portion of contractors' earnings to a portable account, which can be used to cover specific benefits and carried across different jobs. Contractors would have the choice to pool earnings from multiple companies and enjoy tax advantages like employees.

The proposal also calls for a national test to determine worker classification and addresses the debate over the worker status of independent contractors. The issue of worker classification has sparked opposing views, with unions and worker advocacy groups seeking stricter regulations, while some contractors, businesses, and lawmakers argue for preserving the flexibility of the independent contractor model.

IRS progress & key changes for 2024

The National Taxpayer Advocate, Erin Collins, praised the IRS for a remarkable turnaround in 2023 but highlighted that the agency's touted level of phone service during the filing season is not as impressive as it seems. While the IRS achieved an 85 percent level of service benchmark, indicating successful handling of taxpayer inquiries, Collins revealed that only 35 percent of calls made to the agency were answered by IRS employees. The report also noted subpar service on phone lines for setting up installment agreements and paying balance due amounts. Despite these concerns, taxpayers experienced improved accessibility to the IRS compared to previous years. The IRS attributed these positive developments to increased staffing efforts funded by the Inflation Reduction Act. The agency plans to continue enhancing customer service in the future by hiring more representatives and addressing complex issues.

In addition, Collins discussed the trade-off made by the IRS in prioritizing the 85 percent level of service target. The report revealed that customer service representatives, who handle phone inquiries, faced challenges in managing other duties like processing mail correspondence and case materials. Insufficient technology and certain unspecified factors further hindered their ability to perform additional tasks, resulting in idle time for the representatives. Upgrading call center technology was suggested as a solution to improve flexibility and reduce idle time.

As of June 29, 2023, the IRS had 71,000 unprocessed Forms 941, *Employer's Quarterly Federal Tax Return*.

As of June 28, 2023, the total inventory of unprocessed Forms 941-X, *Adjusted Employer's QUARTERLY Federal Tax Return or Claim for Refund*, was approximately 374,000, some of which cannot be processed until the related Forms 941 are processed.

Form I-9 updates

A new Form I-9, *Employment Eligibility Verification*, for 2023 with updated processes and fewer pages will be introduced this year. Once in place, employers are usually given 90 days to use the form in a compliant manner. Immigration Control and Enforcement (ICE) will announce an official timeline when the new processes are approved.

Compliance is especially important due to a recent increase in fines. Until the changes arrive, the current Form I-9 has been extended indefinitely, despite expiring Oct. 31, 2022. Employers should familiarize themselves with the 2023 Form I-9 changes in the proposed regulations.

Penalties for a first offense and substantive violations or uncorrected technical errors in Form I-9 currently range from $252 to $2,507. This is up from $237 to $2,360.

Upcoming changes include the possibility of a permanent remote process for completion of Section 2 to replace the temporary one introduced during the COVID-19 pandemic. This method could involve use of E-Verify or another process to be announced. The current remote completion process was extended through July 2023. This change would establish a permanent one.

In the Notice of Proposed Rulemaking, DHS indicated that the I-9 would include a check box for employers to indicate they used remote Section 2 procedures on the individual I-9. This would allow for an adjustment to audit procedures used by ICE, taking the process into account. Additionally, DHS notes that mandatory training to address fraudulent documentation and anti-discrimination training may be in play for those employers who use the alternative remote procedures.

KPMG unveils transformative initiative harnessing generative AI to empower workforce and enhance client solutions

KPMG LLP has unveiled a new initiative focused on implementing generative artificial intelligence (AI) investments and partnerships. The objective is to empower their workforce, advance innovative client solutions, and transform the operations of the 125-year-old company.

The CEO and Chair of KPMG U.S., Paul Knopp, expressed the firm's commitment to leveraging responsible AI investments and leading the company into a new era of professional services. The aim is to revolutionize client value delivery and provide opportunities for their employees across various markets. Knopp emphasized the importance of employing generative AI capabilities in a responsible and secure manner, ensuring the trust of clients, employees, and regulatory bodies.

KPMG plans to make generative AI capabilities accessible to all partners and professionals within the organization, including client-facing teams and support functions like finance, HR, and corporate affairs. To facilitate this, the firm has initiated a comprehensive firmwide education and skill-building program.

KPMG has developed robust frameworks for responsible AI and security over the past decade, which they are now applying to their own operations. By rapidly introducing generative AI solutions, KPMG aims to empower their professionals to make informed business decisions more efficiently, thereby creating real-time value for their clients.

Payroll vendors have already adopted AI in their solutions but are addressing data security and ethics considerations as they do so. The majority have addressed their approach to AI on their web pages, declaring their current practices and how they intend to move forward into this exciting, and challenging, new world as they assist clients in processing their payroll.

State updates

California: California Lawmakers Approve Budget Boosting Enforcement of Labor Laws and Reviving Wage-Setting Commission

California lawmakers have approved a new state budget that includes measures to strengthen labor law enforcement and reactivate the Industrial Welfare Commission, which can establish minimum wages for specific industries. The budget provides $18 million in grants to local prosecutors for addressing labor law violations and allocates $12 million to tackle the backlog of unpaid wage claims. An additional $3 million has been allocated to revive the dormant Industrial Welfare Commission, granting it the power to set wages and working standards. While critics argue that this addition undermines the referendum process, labor unions see it as a positive step towards reducing inequality and poverty among low-wage workers and marginalized communities.

Idaho:

On February 15, H.B. 21 was signed into law amending the state income tax code updating references to the Internal Revenue Code (IRC) for topics such as, individual income, corporate income, and trust income tax.

Illinois: Illinois Department of Revenue Provides Guidelines for Filing and Storing Tax Forms

The Illinois Department of Revenue (DOR) has released guidelines regarding the filing and storage requirements for Forms W-2, W-2c, W-2G, and 1099-K for both individual and corporate income tax purposes. The guidelines cover various aspects such as electronic filing and storage requirements, available electronic filing methods, the option of using third-party services for information return filing, due dates for the forms, and the consequences of not electronically filing Forms W-2, W-2c, or W-2G. The DOR emphasizes that taxpayers can request a waiver from the electronic filing requirement if they face challenges such as lack of internet access or hardship in filing electronically. Additionally, the publication notifies taxpayers that filing Forms 1099-K electronically on MyTax Illinois is not allowed.

Illinois Passes House Bill 3733: HB 3733 makes changes to labor laws to provide updated and modernized procedures. The passage of this bill results in employers having to provide copies of personnel records to employees by mail or email upon request and will require any employer with remote or traveling employees to make information regarding labor rights available electronically.

The legislation also allows electronic payment of fines for violations of labor laws, expands the Equal Pay Fund to include money collected from penalties, and removes requirements that businesses submit Employer Information Reports to the EEOC when applying for equal pay registration certificates.

Nevada: Nevada Bill SB 290

Nevada recently became the first state to enact an earned wage access (EWA) law. The majority of the provisions outlined in SB 290 are set to take effect on July 1, 2024. This bill defines earned wage access services as the provision of income that has been earned but not yet paid. SB 290 as written requires a person who provides earned wage access services to obtain a license from the Commission of Financial Institutions. The Act also imposed certain requirements on such licenses.

Section 12 of this bill prohibits a person from engaging in the business of a provider without a license issued by the Commissioner of Financial Institutions.

Sections 12-15 sets forth certain requirements for licensure as a provider.

Section 16 of this bill requires each holder of a license as a provider to maintain a surety bond.

Sections 18-20 of this bill authorize the Commissioner to conduct certain examinations of licensees.

Section 21 of this bill requires the Commissioner to: (1) charge a fee for such examinations; (2) employ a certified public accountant to review and conduct independent audits and examinations of licensed providers; and (3) levy an assessment upon each licensed provider to cover the costs related to the employment of the certified public accountant and the performance of the audits and examinations.

New Jersey: New Jersey Tax Division provides guidance for employers and tax preparers on Form W-2 completion and employee contribution withholdings

On June 1, the New Jersey Division of Taxation released a notification to provide guidance to employers in New Jersey as well as tax preparers handling corporate income tax and individual income tax. The purpose of the notice is to aid in the proper completion of the federal Form W-2, which is used to report wages and taxes. Additionally, it offers assistance in the accurate reporting and preparation of employee contribution withholdings for unemployment, New Jersey disability, family leave insurance, and contributions to the workforce development or supplemental workforce fund for the year 2023. Included within the notice are examples of W-2 forms that are considered acceptable by the division, along with relevant instructions for their completion.

New York: New York updates payroll mobility tax guidance to highlight rate increases

New York has issued updated guidance regarding the payroll mobility tax, aligning it with the rate increase introduced in the fiscal 2024 budget. The guidance, released by the New York State Department of Taxation and Finance on June 23, applies to tax quarters starting on or after July 1. It reflects the raised top rate of the metropolitan commuter transportation mobility tax (MCTMT) implemented in May. Employers: metropolitan commuter transportation mobility tax (MCTMT) (ny.gov)

The MCTMT is applicable to employers who must withhold New York state income tax from employee wages and have payroll expenses for covered employees within the metropolitan commuter transportation district (MCTD) that exceed $312,500 in any given calendar quarter. Employers can remit the MCTMT by submitting Form MTA-305, known as the "Employer's Quarterly Metropolitan Commuter Transportation Mobility Tax Return," as specified in the guidance.

Under the fiscal 2024 budget, the top MCTMT rate increases from 0.34 percent to 0.6 percent for employers with payroll expenses exceeding $437,500 in any calendar quarter. The rate also increases for self-employed individuals and individuals earning at least $50,000 per year attributable to specific counties in the MCTD. For the tax year 2023, the rate for these individuals rises from 0.34 percent to 0.47 percent, and for tax years starting on or after January 1, 2024, it further increases to 0.6 percent. These rate adjustments are anticipated to generate $1.1 billion in revenue for the Metropolitan Transportation Authority of the state.

Oregon: Oregon law clarifies state family-leave insurance statutes

Oregon has implemented amendments to its family-leave insurance legislation, as approved by Governor Tina Kotek on June 7. The new law, SB 999, addresses various aspects of the existing legislation.

When employees who have taken family-leave insurance return to work, employers are generally required to reinstate them to their previous positions. However, under SB 999, if an equivalent position is unavailable at the original job site, employers are permitted to offer these employees an equivalent position up to 50 miles away from their previous workplace. Furthermore, SB 999 establishes a clear definition for the one-year duration used to determine the allowable amount of leave for an employee under the family-leave insurance program. This one-year period spans 52 weeks and commences on the Sunday prior to the date the employee commenced their leave. Another provision of the bill mandates the state bureau of labor and industries commissioner to establish regulations for determining the eligibility of an individual as a family member for family-leave insurance purposes. These regulations will include criteria for evaluating whether a substantial personal bond exists between an employee and an individual claiming to be a family member. These amendments will come into effect on September 3, 2023, with the exception of the definition of the one-year period, which will be effective from July 1, 2024.

Washington: Washington's Long-Term Care Payroll Tax Starts July as Other States Explore Similar Programs

On July 1, Washington state began a system where funds will be deducted from employees' paychecks to fund long-term care benefits. These benefits are aimed at supporting individuals who are unable to live independently due to reasons such as illness, injury, or age-related conditions like dementia. Washington state employees will begin contributing to the WA Cares Fund, with a deduction of 0.58% of their total pay per paycheck. For instance, an employee earning $50,000 annually would pay approximately $290 per year.

To be eligible for the benefits, workers must have paid the tax while working for at least 500 hours per year in three of the past six years, or they must have made payments for a cumulative total of 10 years without a break of five years or more.

It is important to note that the benefits provided by WA Cares are not transferable. If individuals who have contributed to the program move out of state, they will not have access to the benefits. However, lawmakers may address this limitation in the future. Additionally, it is worth mentioning that the program only covers the taxpayer and does not extend to their spouse or dependents.

Companies are finding the new tax a challenge when dealing with remote employees who are only working in Washington a few days a week. They are having to determine how to allocate wages for the purposes of this tax.

Meet one of our Employment Tax professionals: Angela Verdessoto

Angela Verdessoto is an associate with our team in New York City and started with the firm in January 2023. Angela assists clients with state payroll tax issues, compliance services related to the corporate reorganizations, and annual reporting compliance at the federal, state, and local levels. Angela enjoys traveling abroad and experiencing new cultures and hopes to visit as many countries as she can throughout her life.

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