
Payroll Guide

□ Highlights □

Many Employers Likely to Pay More Unemployment Tax in 2012 Some employers will pay more unemployment tax in 2012 because their state has had an outstanding federal loan. Some states have increased their tax rates and/or taxable wage bases.

IRS Has Table to Compute Employee Social Security and Medicare Withholding The table uses the current 4.2% employee Social Security withholding tax rate.

Nonresident Alien Employee Withholding Tax Calculation Has Changed The IRS has revised the amount that must be added to a nonresident alien employee's wages to compute withholding, effective with wages paid beginning Jan. 1, 2012.

Former Business Owner Facing Prison Time for Unpaid Payroll Taxes The owner was also ordered to pay the IRS over \$6 million in restitution.

New Report Issued on Health Care Flexible Spending Accounts The Congressional Research Service has issued a report that includes information on the taxation of health care flexible spending accounts.

Final Regulations Conform Personal Injury Regs to Federal Law The gross income exclusion regulations on amounts received on account of personal physical injuries or physical sickness now conform to federal law.

Taxpayer Couldn't Use Mailbox Rule to Qualify for Section 530 Employment Tax Relief The taxpayer couldn't prove that employment tax returns had been timely mailed under federal law.

IRS Issues 2012 Agricultural Employer's Tax Guide The IRS has issued the 2012 version of Publication 51, (*Circular A*), *Agricultural Employer's Tax Guide*.

IRS Updates Tax Guide for Employers in Virgin Islands, Guam, American Samoa There is now a 2012 version of IRS Publication 80.

State Highlights A number of states have reported new laws and developments.

Many Employers Likely to Pay More Unemployment Tax in 2012

Employers in many states are likely to pay more unemployment tax in 2012 than in previous years for a variety of reasons, including: (1) a higher federal unemployment tax (FUTA) rate because of outstanding federal loans; (2) a higher state taxable wage base; and/or (3) a higher state unemployment tax rate and new surcharges.

Alaska. The amount of wages subject to unemployment tax (i.e., the taxable wage base) has increased from \$34,600 to \$35,800. Unemployment tax rates have also increased.

Arkansas. The tax rate on the 2011 federal unemployment tax return due on Jan. 31, 2012 was 0.3% higher than it otherwise would have been because of Arkansas' failure to repay its outstanding federal unemployment insurance (UI) loans for two consecutive years. Employers now pay an advance interest tax to help the State pay the interest on its federal UI loans.

Arizona. Unemployment tax rates have increased. Employers must pay a special assessment to help the State pay the interest on its federal UI loans.

California. The tax rate on the 2011 federal unemployment tax return due on Jan. 31, 2012 was 0.3% higher than it otherwise would have been because of California's failure to repay its outstanding federal UI loans for two consecutive years.

Colorado. The taxable wage base has increased from \$10,000 to \$11,000.

Connecticut. The tax rate on the 2011 federal unemployment tax return due on Jan. 31, 2012 was 0.3% higher than it otherwise would have been because of Connecticut's failure to repay its outstanding federal UI loans for two consecutive years.

Florida. The tax rate on the 2011 federal unemployment tax return due on Jan. 31, 2012 was 0.3% higher than it otherwise would have been because of Florida's failure to repay its outstanding federal UI loans for two consecutive years. The taxable wage base has increased from \$7,000 to \$8,500. Unemployment tax rates have also increased.

Georgia. The tax rate on the 2011 federal unemployment tax return due on Jan. 31, 2012 was 0.3% higher than it otherwise would have been because of Georgia's failure to repay its outstanding federal UI loans for two consecutive years.

Hawaii. The taxable wage base has increased from \$34,200 to \$38,800. Unemployment tax rates have also increased, but could possibly be reduced by 2012 legislation.

Idaho. The taxable wage base has increased from \$33,300 to \$34,100.

Illinois. The tax rate on the 2011 federal unemployment tax return due on Jan. 31, 2012 was 0.3% higher than it otherwise would have been because of Illinois' failure to repay its outstanding federal UI loans for two consecutive years. The taxable wage base has increased from \$12,740 to \$13,560. The maximum unemployment tax rate has increased. The fund building rate has also increased.

Indiana. The tax rate on the 2011 federal unemployment tax return due on Jan. 31, 2012 was 0.6% higher than it otherwise would have been because of Indiana's failure to repay its outstanding federal UI loans for three consecutive years. Employers now also pay a solvency surcharge because of the outstanding federal loans.

Iowa. The taxable wage base has increased from \$24,700 to \$25,300.

Kansas. Unemployment tax rates have increased for employers with negative reserve balances.

Kentucky. The tax rate on the 2011 federal unemployment tax return due on Jan. 31, 2012 was 0.3% higher than it otherwise would have been because of Kentucky's failure to repay its outstanding federal UI loans for two consecutive years. The taxable wage base has increased from \$8,000 to \$9,000.

Maine. Unemployment tax rates have increased.

Michigan. The tax rate on the 2011 federal unemployment tax return due on Jan. 31, 2012 was 0.9% higher than it otherwise would have been because of Michigan's failure to repay its outstanding federal UI loans for four consecutive years. Michigan has now repaid the federal UI loans, so employers will not pay a higher federal unemployment tax (FUTA) rate on their 2012 federal return (due in 2013). The taxable wage base has increased from \$9,000 to \$9,500.

Minnesota. The tax rate on the 2011 federal unemployment tax return due on Jan. 31, 2012 was 0.3% higher than it otherwise would have been because of Minnesota's failure to repay its outstanding federal UI loans for two consecutive years. The taxable wage base has increased from \$27,000 to \$28,000. The new employer rate has increased. The federal loan interest assessment rate has increased.

Missouri. The tax rate on the 2011 federal unemployment tax return due on Jan. 31, 2012 was 0.3% higher than it otherwise would have been because of Missouri's failure to repay its outstanding federal UI loans for two consecutive years.

Montana. The taxable wage base has increased from \$26,300 to \$27,000.

Nevada. The tax rate on the 2011 federal unemployment tax return due on Jan. 31, 2012 was 0.3% higher than it otherwise would have been because of Nevada's failure to repay its outstanding federal UI loans for two consecutive years. A new tax rate schedule went into effect on Jan. 1, 2012 that revised the reserve ratio ranges in the 18 tax rate classes. Employers may pay more unemployment tax in 2012 even if their UI benefit experience is similar to what it was in 2011. The taxable wage base has been reduced from \$26,600 to \$26,400.

New Hampshire. The taxable wage base has increased from \$12,000 to \$14,000.

New Jersey. The tax rate on the 2011 federal unemployment tax return due on Jan. 31, 2012 was 0.3% higher than it otherwise would have been because of New Jersey's failure to repay its outstanding federal UI loans for two consecutive years. The taxable wage base has increased from \$29,600 to \$30,300. Unemployment tax rates increased beginning with the fiscal year that began on July 1, 2011.

New Mexico. The taxable wage base has increased from \$21,900 to \$22,400. Unemployment tax rates have also increased.

New York. The tax rate on the 2011 federal unemployment tax return due on Jan. 31, 2012 was 0.3% higher than it otherwise would have been because of New York's failure to repay its outstanding federal UI loans for two consecutive years.

North Carolina. The tax rate on the 2011 federal unemployment tax return due on Jan. 31, 2012 was 0.3% higher than it otherwise would have been because of North Carolina's failure to repay its outstanding federal UI loans for two consecutive years. The taxable wage base has increased from \$19,700 to \$20,400.

North Dakota. The taxable wage base has increased from \$25,500 to \$27,900.

Ohio. The tax rate on the 2011 federal unemployment tax return due on Jan. 31, 2012 was 0.3% higher than it otherwise would have been because of Ohio's failure to repay its outstanding federal UI loans for two consecutive years.

Oklahoma. The taxable wage base has increased from \$18,600 to \$19,100.

Oregon. The taxable wage base has increased from \$32,300 to \$33,000.

Pennsylvania. The tax rate on the 2011 federal unemployment tax return due on Jan. 31, 2012 was

0.3% higher than it otherwise would have been because of Pennsylvania's failure to repay its outstanding federal UI loans for two consecutive years.

Rhode Island. The tax rate on the 2011 federal unemployment tax return due on Jan. 31, 2012 was 0.3% higher than it otherwise would have been because of Rhode Island's failure to repay its outstanding federal UI loans for two consecutive years. The taxable wage base has increased from \$19,000 to \$19,600 for most employers. It has increased to \$21,100 for employers who are in the highest unemployment tax rate bracket.

South Carolina. The taxable wage base has increased from \$10,000 to \$12,000.

South Dakota. The taxable wage base has increased from \$11,000 to \$12,000.

Utah. The taxable wage base has increased from \$28,600 to \$29,500. Unemployment tax rates have also increased, but could possibly be reduced by 2012 legislation.

Vermont. The taxable wage base has increased from \$13,000 to \$16,000.

Virginia. The tax rate on the 2011 federal unemployment tax return due on Jan. 31, 2012 was 0.3% higher than it otherwise would have been because of Virginia's failure to repay its outstanding federal UI loans for two consecutive years. Unemployment tax rates have also increased.

Virgin Islands. The tax rate on the 2011 federal unemployment tax return due on Jan. 31, 2012 was 0.3% higher than it otherwise would have been because of the Virgin Islands' failure to repay its outstanding federal UI loans for two consecutive years. The taxable wage base has increased from \$22,600 to \$23,700.

Washington. The taxable wage base has increased from \$37,300 to \$38,200.

Wisconsin. The tax rate on the 2011 federal unemployment tax return due on Jan. 31, 2012 was 0.3% higher than it otherwise would have been because of Wisconsin's failure to repay its outstanding federal UI loans for two consecutive years.

Wyoming. The taxable wage base has increased from \$22,300 to \$23,000.

IRS Has Table to Compute Employee Social Security and Medicare Withholding

The IRS has issued a table to compute the amount of Social Security and Medicare taxes to withhold from employees during January and February. It's

called the “Employee Social Security (4.2%) and Medicare (1.45%) Tax Withholding Table.” It will replace the current Table 3 in IRS Pub No. 926, *Household Employer’s Tax Guide For Wages Paid in 2012*. The current Table 3 computes employee Social Security tax withholding at a 6.2% rate, but IRS Pub No. 926 was issued before Congress enacted legislation that extended the 4.2% employee Social Security withholding tax rate through *Feb. 29, 2012*. The new Table 3 computes employee Social Security withholding at the 4.2% rate. Congress is considering legislation that will keep the 4.2% rate in effect through Dec. 31, 2012. IRS Pub No. 926 will be updated to include the new Table 3 and to take into account any extension of the 4.2% tax rate beyond Feb. 29, 2012. If legislation is not enacted, the employee Social Security withholding tax rate will revert back to 6.2% on March 1, 2012 [IRS website, *Update to the 2012 Publication 926, Household Employer’s Tax Guide, 1/24/12*].

IRS Pub No. 926 also includes a list of state unemployment tax agency names, addresses, phone numbers, and website locations.

Nonresident Alien Employee Withholding Tax Calculation Has Changed

The IRS has revised the amount that must be added to a nonresident alien employee’s wages to compute withholding, *effective with wages paid beginning Jan. 1, 2012* [IRS Pub No. 15, Section 9, *Withholding Adjustment for Nonresident Aliens*].

Background. The withholding calculations for nonresident alien employees are different than for other employees, because nonresident alien employees are not entitled to the standard deduction that is built into the withholding tables. Notice 2005-76, 2005-2 CB 947, requires employers to add an amount to wages before determining withholding under the wage bracket or percentage methods in order to offset the standard deduction built into the withholding tables. The addback amount varies by pay period (i.e., weekly, biweekly, monthly, etc.).

The addback amounts for the 2012 tax year are as follows:

- *Weekly Payroll:* \$41.35;
- *Biweekly Payroll:* \$82.69;
- *Semimonthly Payroll:* \$89.58;
- *Monthly Payroll:* \$179.17;
- *Quarterly Payroll:* \$537.50;
- *Semiannual Payroll:* \$1,075.00;

- *Annual Payroll:* \$2,150.00; and
- *Daily or Miscellaneous Payroll:* \$8.27.

Employers should add the above amounts to the wages that the nonresident alien employee earns during the payroll period before computing withholding. Employers must also consider the number of withholding allowances that the nonresident alien employee claimed before computing withholding (generally limited to one allowance).

The addback does not apply to wages earned by nonresident alien students from India and business apprentices from India.

Former Business Owner Facing Prison Time for Unpaid Payroll Taxes

A Missouri federal district court has sentenced former Joplin, Missouri business owner Robert W. Landis to three years and one month in federal prison, without the possibility of parole, and ordered him to pay the IRS \$6,264,228 in restitution, for failing to pay payroll taxes that were deducted from his employees’ wages [U.S. Attorney’s Office for the Western District of Missouri Press Release, *Joplin Business Owner Sentenced to Prison for Tax Violations, Ordered to Pay \$6.2 Million Restitution, 1/24/12*].

Landis was the owner of Priority Personnel of Missouri, and Priority Personnel of Kansas, which were temporary employment agencies, from December 2003 until June 2007. Landis was also the owner of Loma Landis LLC, which managed residential structures known as villas and operated nearby golf courses. Each of the above companies deducted payroll taxes (including federal income, Social Security, and Medicare taxes) from employees’ pay. Landis admitted, however, that he failed to truthfully account for, or pay to the IRS, payroll taxes that were deducted and withheld from the paychecks of Priority Personnel of Missouri employees. Landis pleaded guilty on Aug. 24, 2011 to this transgression.

The restitution order was for the tax loss of approximately \$4,893,364, plus accrued interest.

New Report Issued on Health Care Flexible Spending Accounts

The Congressional Research Service (CRS) has issued a report that includes information on the taxation of health care flexible spending accounts (FSAs) [CRS Report 7-5700, *Health Care Flexible Spending Accounts, 1/11/12*].

Background. Health care FSAs are benefit plans established by employers to reimburse employees for health care expenses, such as deductibles and co-payments. They are usually funded by employees through salary reduction agreements, although employers may contribute as well. Contributions to and withdrawals from FSAs are tax-free.

The report notes that: (1) health care FSAs are only available to employees and former employees. (2) The IRS currently imposes no dollar limit on health care FSA contributions, but employers generally do. (3) FSAs can generally only be used for unreimbursed medical expenses that would be deductible under the Internal Revenue Code (IRC). They can't be used for health insurance or long-term care insurance premiums. (4) Employers may impose additional restrictions on the use of health care FSAs.

Patient Protection and Affordable Care Act. The Patient Protection and Affordable Care Act (PPACA, PL 111-148) made several key changes to the FSA rules. Of note is that the PPACA modified the definition of "qualified medical expenses," beginning in 2011, to remove over-the-counter medicines (except those prescribed by a physician). The PPACA also limits the amount of contributions that may be made to health care FSAs beginning in 2013 to \$2,500 per year (indexed for inflation after 2013).

Tax treatment of FSAs. An FSA is a type of flexible benefit arrangement. Flexible benefit arrangements generally qualify for tax advantages as an Code Sec. 125 "cafeteria plan," under which employees choose between cash (typically, take-home pay) and certain nontaxable benefits (in this case, reimbursements for health care expenses) without paying taxes if they select the benefits. FSAs are considered part of a cafeteria plan when they are funded through voluntary salary reductions. If FSAs are funded by nonelective employer contributions, they are not governed by the cafeteria plan provisions, but the benefits are still excludible from income under another provision in the IRC (e.g., Code Sec. 105, Code Sec. 106, or Code Sec. 129).

Final Regulations Conform Personal Injury Regs to Federal Law

The IRS has finalized regulations that conform federal gross income exclusion regs for amounts received on account of personal physical injuries or physical sickness to federal law. In addition, the final regs allow taxpayers to exclude damages received on account of emotional distress that is attributable to a

physical injury or physical sickness from gross income [TD 9573, 01/20/2012; Reg § 1.104-1, 01/20/2012].

Federal law. Code Sec. 104(a)(2) currently excludes from gross income (and employment tax) the amount of any non-punitive damages received by a taxpayer in a suit or agreement (whether in a lump sum or as periodic payments) as compensation for personal physical injury or personal physical sickness. The statute had been amended by Sections 1605(a) and (b) of the Small Business Job Protection Act of 1996 (the 1996 Act, PL 104-188).

Section 1605(a) of the 1996 Act amended Code Sec. 104(a)(2) to expressly provide that punitive damages do not qualify for the income exclusion. Section 1605(a) also amended Code Sec. 104(a)(2) to provide that the income exclusion generally is limited to amounts received on account of personal "physical" injuries or "physical" sickness.

Section 1605(b) of the 1996 Act amended Code Sec. 104(a)(2) to allow damages not in excess of the amount paid for the cost of medical care (as defined in Code Sec. 213(d)(1)(A) and Code Sec. 213(d)(1)(B)) for emotional distress to be excluded from gross income, even though emotional distress is not considered a physical injury or a physical sickness.

Final federal regulations. The final regs conform federal regulations (Reg § 1.104-1(c)) to federal law and allow a taxpayer to exclude damages received for emotional distress from gross income if the damages are "attributable" to a physical injury or physical sickness.

In addition, the final regs eliminate the requirement in current regulations that "personal injuries or sickness" be "based upon tort or tort type rights." Under the final regulations, damages for physical injuries may qualify for the Code Sec. 104(a)(2) exclusion even though the injury giving rise to the damages is not defined as a tort under state or common law. This change was made because there have been legislative and judicial developments since the regs were originally adopted that eliminated the need to base the Code Sec. 104(a)(2) exclusion on tort and remedies concepts.

The final regulations apply to damages paid pursuant to a written binding agreement, court decree, or mediation award entered into or issued after Sept. 13, 1995, and received *after Jan. 23, 2012*. However, taxpayers may apply the final regs to amounts paid pursuant to a written binding agreement, court decree, or mediation award entered into or issued after Sept. 13, 1995, and received after Aug. 20, 1996.

Taxpayer Couldn't Use Mailbox Rule to Qualify for Section 530 Employment Tax Relief

The U.S. Court of Federal Claims has ruled that the owner of a trucking firm who incorrectly treated his drivers as independent contractors, rather than employees, failed to qualify for Section 530 employment tax relief because he failed to prove that he had timely mailed the 1099 forms for the drivers [*Martinez v. U.S.*, Ct. Fed. Cl., 109 AFTR 2d 2012-401, 1/5/12].

Background on Section 530 relief. Employers are generally required to withhold and pay employment taxes (FICA, FUTA, and withheld income tax) on wages paid to their employees. Code Sec. 3121(d)(2) defines an employee as an individual who, under the common law (case law) rules, has the status of an employee. Under Section 530 of the Revenue Act of 1978, as amended, employers that meet the following three requirements will be protected from tax assessments even though they incorrectly classified a worker as an independent contractor: (1) reasonable basis, (2) substantive consistency, and (3) reporting consistency.

To meet the "reporting consistency" requirement, the employer must not have classified the workers as employees on any required federal tax returns, including information returns. This means, for example, that if an employer treated a worker as an independent contractor and paid him/her \$600 or more, the employer must have filed a Form 1099-MISC, *Miscellaneous Income*, for the worker.

The facts. Severino Martinez operated a sole proprietorship named Martinez Trucking from 1987 until 2000. He treated his drivers as independent contractors, rather than employees, believing that this was standard practice in the area. The IRS audited the company's 1995 and 1996 employment tax returns. The IRS determined that his drivers were employees and that Martinez had failed to pay federal employment taxes. Martinez paid the assessed taxes, penalties, and interest for one worker for 1995 and 1996, and filed a refund claim and then a refund suit with the Court of Federal Claims. Martinez contended that he was entitled to Section 530 "safe haven" relief from the assessments because he consistently treated his drivers as independent contractors and had a reasonable basis for doing so.

The law. Under the "physical delivery" rule, a tax return is considered filed when the IRS physically receives it. There are the following two exceptions to the physical delivery rule. (1) Code Sec. 7502(a) states that if a tax return arrives late but is postmarked

before the due date, the postmark date is treated as the delivery date. (2) Code Sec. 7502(c) states that registration of a mailing containing a return is prima facie evidence of delivery, and the registration date is the postmark date under the timely mailing-timely filing rule.

There is also a "mailbox rule" under common (case) law. It says that when mail is properly addressed and deposited in the U.S. mails, with proper postage pre-paid on it, there is a rebuttable presumption of fact that it was received by the addressee in the ordinary course of the mail.

The IRS conceded that Martinez qualified for relief from the 1995 assessment, but contended that he failed to meet Section 530's reporting consistency requirement for the 1996 assessment because he hadn't timely filed the 1099 forms. Martinez argued that he could prove timely delivery under the common law mailbox rule.

The ruling. The Court of Federal Claims ruled that Martinez did not meet the reporting consistency requirement, and, therefore, wasn't entitled to Section 530 relief. The court said that Code Sec. 7502 provides the only exceptions to the physical delivery rule. It noted that Martinez had admitted that he couldn't prove timely delivery under either the physical delivery rule or the Code Sec. 7502 exception.

The court also noted that, even if Martinez could invoke the common law mailbox rule, he still couldn't prove that the 1099 forms had been timely delivered to the IRS. The court found testimony from Martinez's witnesses regarding the mailing of the forms to be vague, unreliable, or inconclusive.

IRS Issues 2012 Agricultural Employer's Tax Guide

The IRS has issued the 2012 version of Publication 51, (*Circular A*), *Agricultural Employer's Tax Guide*. The publication includes: (1) the 2012 percentage method and wage bracket withholding tables; (2) a calendar with important employment tax deadlines; and (3) a section that discusses the types of activities that qualify as farmwork and how the activities are taxed for FITW, FICA, and FUTA purposes.

H-2A foreign agricultural workers. Publication 51 notes that compensation of \$600 or more paid to foreign agricultural workers who entered the country on H-2A visas should be reported in Box 1 on Form W-2. This compensation is not subject to FICA taxes, and, therefore, should not be reported as wages subject to Social Security tax or Medicare tax on either

Form W-2 or Form 943, *Employer's Annual Federal Tax Return for Agricultural Employees*. Employers are not required to withhold federal income tax from compensation paid to H-2A workers for agricultural labor performed in connection with the visa, unless the worker asks for withholding and the employer agrees. In that case, the worker must give the employer a completed Form W-4.

No Social Security number. The IRS issues an individual taxpayer identification number (ITIN) to resident and nonresident aliens who need identification for tax purposes, but who are not eligible for U.S. employment. The IRS advises an individual with an ITIN who later becomes eligible to work in the United States to obtain a Social Security number (SSN). Employers should not use an ITIN in place of an SSN on Form W-2. If an employer is filing its W-2 forms on paper and an employee has applied for an SSN, but does not yet have one, the employer should enter "Applied For" on Box a of the form. Employers filing their W-2 forms electronically should enter all zeros (000-00-0000) in the Social Security Number field. When the employee receives the SSN, the employer should file Copy A of Form W-2c with the Social Security Administration to show the employee's SSN. The employer should furnish copies B, C, and 2 of Form W-2c to the employee.

IRS Updates Tax Guide for Employers in Virgin Islands, Guam, American Samoa

There is now a 2012 version of IRS Publication 80, (*Circular SS*), *Federal Tax Guide for Employers in the U.S. Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands*, on the IRS website.

IRS Publication 80 summarizes employer responsibilities with respect to collecting, paying, and reporting applicable taxes when an employer's principal place of business is in the U.S. Virgin Islands, Guam, American Samoa, or the Commonwealth of the Northern Mariana Islands, or the employer has employees who work in these jurisdictions. The publication primarily focuses on Social Security and Medicare taxes. In addition, it provides information on FUTA taxes for employers in the U.S. Virgin Islands. It does not include instructions for income tax withholding. There is a calendar in the publication that contains important employment tax deadlines. There are also sections on classifying employees, EINs, wages, tips, FICA taxes for farmworkers, depositing taxes, employment tax returns, and wage and tax statements.

What's new. The IRS notes that, beginning with the 2012 tax year, it is discontinuing Form 944-SS, *Employer's Annual Federal Tax Return (American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the U.S. Virgin Islands)*. Employers who previously filed Form 944-SS may file Form 944 if they wish to continue to file annually for the 2012 tax year (return due in January 2013). Alternatively, they may request to file quarterly using Form 941-SS, *Employer's Quarterly Federal Tax Return for American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the U.S. Virgin Islands*.

Stateline

New laws and developments are reported from the following states:

ALABAMA

E-Verify. *Effective April 1, 2012*, all Alabama employers must verify whether new hires are eligible to work in the United States. The Alabama Department of Homeland Security now has a service on its website called the "Alabama E-Verify Employer Agent Service" to help small businesses (i.e., employers with 25 or fewer employees) meet this requirement. Employers may also determine the employment eligibility of new hires using E-Verify on the U.S. Citizenship and Immigration Services website [Alabama Information Center website].

CALIFORNIA

Wage Payment. The California Court of Appeal has upheld a lower court ruling finding that insurance agents were independent contractors, and not employees. As a result, the employer did not have to reimburse the insurance agents for their business expenses or pay the insurance agents any earned but unpaid wages prior to the termination of the agreement. The lower court determined that the agents were independent contractors under the common law test for employment. In making this determination, the court noted that the agreement between the insurance agents and the employer was nonexclusive. The agents could also work for other insurance companies. In addition, the agents made their own decisions on whom they would try and sell the employer's products to. The employer did not evaluate the agents' job performance and did not supervise their work. The employer only provided training on a voluntary basis. Agents at one employer office were required to pay a fee for their workspace and telephone service [*Arnold v. Mutual of Omaha Insurance Co.*, Cal. Ct. App., 1st Dist., Dkt. No. A131440, 12/30/11].

COLORADO

Withholding. The Colorado Department of Revenue (DOR) no longer accepts W-2 forms submitted by magnetic media on half-inch tape, 3480 cartridge, CD-ROM, diskette, or by e-mail. Revenue Online must be used instead of magnetic media and e-mail. Employers with 250 or more employees must submit their W-2 forms electronically. The deadline for filing W-2 forms electronically is *April 2, 2012*. Paper filers must submit their W-2 forms by Feb. 29, 2012 [Colorado FYI Tax Publication Withholding 6, 01/01/2012].

Businesses can now register for a withholding tax account license on the Colorado Business Express website [Colorado Department of Revenue TaxInfo Blog, *Get state tax licenses online*, 12/9/11].

CONNECTICUT

Withholding. The Connecticut Department of Revenue Services (DRS) has issued its 2012 employer guide. The withholding tables and withholding calculation rules have been revised to take into account new tax rates, the 3% phase-out provision, and the recapture tax provision (see Payroll Guide at ¶ 23,803 and Payroll Guide at ¶ 23,804). The penalty computation for failing to pay electronically when required has been revised. Successor liability now applies to income tax withholding [Connecticut Informational Publication 2012(1), 01/01/2012].

DISTRICT OF COLUMBIA

Withholding. Mayor Gray has signed the "Retirement Distribution Withholding Temporary Act of 2012." The temporary legislation will clarify that District of Columbia tax must be withheld from distributions made after Dec. 31, 2011 from a retirement plan or retirement account if the distribution is subject to federal withholding. The legislation has been sent to Congress for review [L. 2012, Act 19-275, *effective after a 30-day period of congressional review*].

IDAHO

Withholding. There is now a Dec. 19, 2011 version of *A Guide to Idaho Income Tax Withholding* on the Idaho State Tax Commission (STC) website. The Guide notes that: (1) the electronic filing deadline for W-2 and 1099 forms is now the last day of February; (2) Idaho no longer accepts 1099 forms submitted on magnetic media (electronic and paper are the only acceptable filing methods); (3) electronic filers will no longer receive paper copies of Form 910, *Idaho Withholding Payment Voucher*; (4) ACH debit payments may now be made using Taxpayer Access Point (TAP) on the STC website; and (5) the withholding tables were revised on December 19 (see Payroll Guide at ¶ 24,402) [Idaho Tax Update 1, 01/01/2012, 24].

ILLINOIS

Withholding. The mailing address for Form IL-941, *2012 Illinois Withholding Income Tax Return*, is now: Illinois Department of Revenue, P.O. Box 19052, Springfield, Illinois 62794-9052. The form is filed quarterly, beginning in April [Illinois Dept. of Rev. Info. Bulletin FY 2012-05, 01/01/2012].

INDIANA

Unemployment. A spokesperson for the Indiana Department of Workforce Development (DWD) has told *RIA* that unemployment tax rates for experienced employers will continue to be determined under Schedule E in the 2012 calendar year. Rates range from 0.5% to 7.4%. Experienced employers will also pay an 8% solvency surcharge in 2012 (down from 13% in 2011) due to the State's failure to repay its outstanding federal unemployment insurance loans. New employers pay 2.5%, except new government employers pay 1.6%. The taxable wage base is \$9,500 [Indiana DWD Memorandum, *2012 Unemployment Insurance Premium Rates and Other News*, 12/16/11].

KENTUCKY

Withholding. The Kentucky Department of Revenue (DOR) has issued its 2011 W-2 electronic filing specifications. The forms must have been filed with the DOR by *Jan. 31, 2012*. The DOR follows the Social Security Administration's (SSA) electronic filing specifications in SSA Publication EFW2. The DOR accepts annual W-2 information that is submitted over the web or on CD. The DOR does not accept W-2 forms submitted on 9-track reel tape magnetic media; 3480, 3490 cartridges; 3.5-inch diskettes; or computer listings [DOR Notice, *Specifications for Electronic Submission of Annual Wage and Tax Information via Electronic Media or Web for Year 2011*, 1/12/12].

A spokesperson for Gallatin County has told *RIA* that the first \$5,000 of salaries and wages earned by employees is no longer exempt from the Gallatin County occupational license tax.

LOUISIANA

Withholding. There is now a January 2012 version of Form R-1306, *Louisiana Withholding Tables and Formulas*, on the Louisiana Department of Revenue (DOR) website. There are no changes to the withholding tables in Payroll Guide at ¶ 25,002 and Payroll Guide at ¶ 25,003 [Louisiana Form R-1306, 1/1/12; Phone call to DOR on Jan. 24, 2012].

MARYLAND

Unemployment. Employers will continue to have the option of paying their quarterly unemployment taxes in installments in the 2012 tax year. There are four different

installment payment plan options (see Payroll Guide at ¶ 13,207) [2012 Maryland Department of Labor, Licensing, and Regulation (DLLR) Experience Rate Notice, January 2012].

MASSACHUSETTS

Unemployment. The Massachusetts legislature has passed legislation that would keep unemployment insurance (UI) tax rate Schedule E in effect in the 2012 tax year. The legislation would prevent an estimated tax increase on employers of approximately \$220 per employee. Schedule E tax rates range from 1.26% to 12.27% (see Payroll Guide at ¶ 13,304). Schedule E has been in effect since 2009. The legislation will soon go to Governor Patrick [House Minority Leader Bradley H. Jones, Jr. Press Release, *House and Senate Republicans File Legislation to Freeze Unemployment Insurance Tax Rate*, 1/12/12].

MISSISSIPPI

Unemployment. A spokesperson for the Mississippi Department of Employment Security (DES) has told *RIA* that unemployment tax rates for experienced employers range from 0.95% to 5.4% in the 2012 tax year. The new employer rate remains at 1.15% in the first year of liability, 1.25% in the second year of liability, and 1.35% in the third year of liability. The above rates include the 0.15% workforce enhancement training fund assessment. The taxable wage base remains at \$14,000 in 2012.

Withholding. Employers with fewer than 50 W-2 forms had until *Jan. 31, 2012*, to file W-2 forms on paper. Only electronic filing is permitted after Jan. 31st. Employers filing up to 50 W-2 forms may now key in and submit W-2 data on the Mississippi Department of Revenue (DOR) website. Employers who key in the information will receive a confirmation notice from the DOR that the data has been received. Employers filing 50 or more W-2 forms must file electronically [DOR website, *Summary of Instructions for 2011 Annual Information Returns*, 1/18/12].

NEBRASKA

Withholding The Nebraska Department of Revenue (DOR) has issued an information guide that discusses the withholding tax rules on payments to nonresident individuals performing personal services in Nebraska. A nonresident employee who is paid wages subject to federal income tax withholding is subject to Nebraska withholding on all wages earned while working in Nebraska. The wages are taxed at the same rates used by Nebraska residents. The information guide includes examples on how to calculate withholding, and explains how to complete Form W-4NA, *Nebraska Withholding Certificate for Nonresident Individuals*. There is also

guidance on the withholding rules with respect to payments made to nonresident aliens [Nebraska Information Guide 8-515-1992, 01/23/2012].

NEW MEXICO

Unemployment. The New Mexico Department of Workforce Solutions (DWS) has announced that it will be implementing an automated, integrated unemployment insurance tax and claims system later in the year. Employers will be required to respond electronically to all claim-related correspondence. Employers with 15 or more employees will also be required to electronically file their quarterly tax reports using the new system. Employers must activate their account before they can log in to the new system [DWS Letter, *Activate Your Unemployment Insurance Tax Self-Service Account*, January 2012].

Withholding. Amended regulations require withholding tax returns due *after July 1, 2011*, that are due at the same time as the gross receipts tax, to be filed electronically if the taxpayer's average monthly tax liability for taxes due under the Gross Receipts and Compensating Tax Act, Local Options Gross Receipts Tax Acts, Leased Vehicle Gross Receipts Tax Act, Interstate Telecommunication Gross Receipts Tax Act, and Withholding Tax Act during the preceding calendar year equaled or exceeded \$1,000. Previously, the taxes were required to be filed electronically if the taxpayer was required to file monthly returns [New Mexico Administrative Code Section 3.1.4.18, as amended in New Mexico Register, Vol. 23, No. 1, 1/17/12].

NEW YORK

Employer Taxes. *Effective for the calendar quarter beginning on April 1, 2012* (second quarter of 2012), the quarterly payroll expense threshold that an employer must exceed to make the employer liable for the Metropolitan Commuter Transportation Mobility Tax (MCTMT) increases from \$2,500 in any calendar quarter to \$312,500 in any calendar quarter. Also beginning with the second quarter of 2012, an employer who is not subject to the MCTMT for a quarter is not required to file a quarterly MCTMT return for that quarter. The MCTMT tax rate varies based on the size of an employer's quarterly payroll expense. In a new technical memorandum, the New York State Department of Taxation and Finance (DTF) notes that because of the new quarterly payroll expense thresholds, certain PromptTax filers may not be able to determine at the beginning of a calendar quarter whether they will be subject to the MCTMT for that quarter, or which MCTMT tax rate will apply. The DTF has adopted a new policy, *effective beginning with the second quarter of 2012*, under which employers will not be subject to any penalties for underpayment of MCTMT PromptTax payments if they use their previous quarter's

payroll expense to determine if they expect to be subject to the MCTMT and if they must make MCTMT PromptTax payments in the current quarter. Therefore, employers whose payroll expense in the previous calendar quarter did not exceed \$312,500 are not required to make MCTMT PromptTax payments in the current quarter. Employers whose payroll expense exceeded \$312,500 in the previous quarter and who must make MCTMT PromptTax payments in the current quarter may use the MCTMT tax rate that applied to their payroll expense for that previous quarter to compute the MCTMT PromptTax payments due. At the end of the calendar quarter, employers must compute their actual MCTMT liability, using the rate that applies to their actual payroll expense for that quarter. Any unpaid tax must be remitted with the quarterly return [New York Technical Service Bureau Memorandum TSB-M-12(1)MCTMT, 01/26/2012].

Withholding. The deadline for filing Form NYS-45, *Quarterly Combined Withholding, Wage Reporting, And Unemployment Insurance Return*, was January 31. The annual wage and withholding information (Part C, columns d and e) must also have been submitted by this date. The New York State Department of Taxation and Finance (DTF) reminded employers that they must answer the following question on Form NYS-45: "Are dependent health insurance benefits available to any employee?" [DTF e-mail, 1/23/12].

OREGON

Withholding. The Oregon Department of Revenue (DOR) has announced that "iWire Direct," the direct filing option for W-2 information, will be available in the first week of March. This filing option allows small businesses with a small number of W-2 forms to input the W-2 information directly into the DOR's iWire system. Employers must electronically submit their W-2 forms to the DOR even if they are not required to do so for federal purposes. The deadline for filing the W-2 forms is *April 2, 2012* [DOR PayrollTax News LISTSERV, January 2012].

PENNSYLVANIA

Withholding. The Pennsylvania Department of Community and Economic Development (DCED) has posted an 118-page policy and procedure manual on Act 32 of 2008 (Act 32) on its website. Act 32 created a new local earned income tax (EIT) collection system that went into effect on *Jan. 1, 2012*. The manual includes guidance on

the withholding and payment rules in Act 32 (see Section 512—Withholding and Remittance). It also includes an Appendix with related tax forms. See Payroll Guide at ¶ 9068 for further information on Act 32 [Act 32 of 2008 Policy and Procedure Manual, January 2012].

UTAH

Unemployment. In his State of the State Address, Governor Gary R. Herbert called on the Utah Legislature to support a bill (Senate Bill 129) that would reduce the maximum unemployment tax rate beginning in 2012 from 9% to 7%. Senate Bill 129 would also cap the social contribution rate for all employers at 0.4% in the 2012 calendar year. Unemployment tax rates for experienced employers in the 2012 calendar year are currently scheduled to range from 0.5% to 9.5% (includes 0.5% social contribution rate) [Governor Herbert State of the State Address, 1/25/12].

VERMONT

Withholding. The Vermont Department of Taxes has updated its technical bulletin on the computation of withholding taxes to include developments that have occurred since the release of the last bulletin on Dec. 8, 2005 [Vermont Technical Bulletin TB-23, 01/13/2012].

WEST VIRGINIA

Withholding. The West Virginia Tax Department has updated its publication that lists the Tax Division's telephone numbers [West Virginia Taxpayer Services Division Publications TSD-2, 01/01/2012].

WYOMING

Unemployment. Employers who file quarterly unemployment tax reports using the WIRE (Wyoming Internet Reporting for Employers) system can now also authorize electronic payments. Features of the payment system include: scheduling payments for a future date; authorizing specific payment amounts for both unemployment insurance and workers' compensation; authorizing payments from multiple bank accounts; receiving e-mail confirmation of the authorization; tracking the payment progress on the Employer Profile screen; and eliminating the need for mailing paper reports and checks [Wyoming Department of Workforce Services website, *The Quarterly Connection*, Fourth quarter 2011].

