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Payroll Guide

Highlights

Employers in 20 States May Pay Higher Federal Unemployment Tax Rates in 2011 A spokesperson for the Department of Labor has provided *RIA* with a list of states where the 2011 federal unemployment tax rate for employers may be higher than in previous years.

Auto and Truck Fair Market Value Limitations Are Calculated for 2012 We have calculated the auto and truck fair market value limitations for the 2012 tax year under both the cents-per-mile method and the fleet-average valuation rule.

President Signs Bill that Repeals 3% Withholding Rule for Government Contractors The Act repeals the controversial rule under which federal, state, and local governmental entities would have been required to withhold 3% on payments made to vendors providing property or services.

Reporting Agents Should Not Be Using Client's PIN to Electronically Sign Form 94x Series Returns Reporting agents should be signing electronically-filed Forms 940, 941, and 944 with their own 5-digit PIN, rather than with the 10-digit PIN of their client.

Payday Lender Needs Court Order Before Asking an Employer to Garnish a Debtor's Wages Under federal law, a private creditor cannot require employers to garnish wages for debts it is owed without obtaining a court order.

Advisory Group Offers Suggestions for Improving Information Reporting Compliance The report includes recommendations in the following areas: (1) health care reporting on Form W-2; (2) reporting of death benefits; (3) reporting of employee business expense reimbursements; (4) stock option compensation reporting; and (5) TIN masking on payee 1099 forms.

IRS Issues New Version of Form for Requesting a Taxpayer Identification Number The IRS has posted a December 2011 version of Form W-9, *Request for Taxpayer Identification Number and Certification*, on its website.

IRS Issues 2011 Version of Personal Income Tax Form Used by Misclassified Workers to Report Uncollected FICA Taxes This form is filed by workers who were employees in 2011, but were treated as independent contractors by their employers.

New Legislation Allows Tax-Exempt Employers to Receive Payroll Tax Credit for Hiring Qualified Veterans The credit will be claimed against the Social Security tax that the exempt employer would otherwise have to pay on the wages of all of its employees.

IRS Updates State and Local Government Employer Reference Guide There is now a November 2011 version of Publication 963, *Federal-State Reference Guide*, on the IRS website.

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

Employers in 20 States May Pay Higher Federal Unemployment Tax Rates in 2011

A spokesperson for the Department of Labor (DOL) has provided *RIA* with a list of states where employers may not be eligible to claim the maximum amount of state unemployment tax credits on their 2011 federal unemployment (FUTA) tax return, because the state has had an outstanding federal unemployment insurance (UI) loan for at least two years.

Background. Employers pay FUTA tax at a rate of 6.0% (beginning July 1, 2011) on the first $7,000 of covered wages paid to each employee during a calendar year, regardless of when those wages were earned. This tax may be offset by credits of up to 5.4% (known as the "normal credit" and "additional credit") against their FUTA tax liability for amounts paid to a state unemployment fund by January 31 of the subsequent year (see Payroll Guide at ¶ 4075). The Secretary of Labor has certified that employers in all 50 states (and the District of Columbia, Puerto Rico, and the Virgin Islands) are eligible for the maximum "normal credit" and "additional credit" against their federal unemployment tax (FUTA) liability for the 12-month period ending on Oct. 31, 2011 [Fed. Reg. Vol. 76, p. 68790-68791, 11/07/2011].

The net FUTA tax rate for most employers is 0.8% in the first half of 2011 (i.e., 6.2% – 5.4%). The net FUTA tax rate for most employers is 0.6% in the second half of 2011 (i.e., 6.0% – 5.4%).

Under Title XII of the Social Security Act, states with financial difficulties can borrow funds from the federal government to pay unemployment benefits. If a state defaults on its repayment of the loan, the amount of state unemployment tax credits that employers in the state may claim is reduced. Employers in credit reduction states pay FUTA tax at a 0.3% rate higher than other employers, beginning with the second consecutive January 1 in which the loan is not repaid by November 10 of that year. For each succeeding year in which there is a balance, the credit is further reduced by an additional 0.3%.

Possible credit reduction states for 2011. The DOL list includes the following 23 states, and the Virgin Islands as potential credit reduction states in 2011: Alabama, Arkansas, California, Connecticut, Florida, Georgia, Idaho, Illinois, Indiana, Kentucky, Michigan, Minnesota, Missouri, North Carolina, New Jersey, Nevada, New York, Ohio, Pennsylvania, Rhode Island, South Carolina, Virginia, the Virgin Islands, and Wisconsin. However, the DOL spokesperson has told *RIA* that employers in Alabama, Idaho, and South Carolina are not likely to be on the final list of credit reduction states on the 2011 Form 940, Schedule A, *Multi-State Employer and Credit Reduction Information.*

Alabama. Alabama repaid its federal UI loans by Nov. 10, 2011 [Alabama Department of Industrial Relations (DIR) News Release, *Alabama Employers to Receive Tax Assessment to Avoid Loss of FUTA Credit,* 8/8/11].

Idaho. Idaho repaid its federal UI loans by Nov. 10, 2011 [Idaho Department of Labor News Release, *Idaho Repays Federal Unemployment Benefit Loan,* 9/1/11].

South Carolina. South Carolina has started paying back its federal UI loans and has received conditional approval from the DOL to not be a credit reduction state in 2011. Under Code Sec. 3302(g), a state may request that the credit reduction not apply if it has repaid a certain amount of the loan balance by November 10 of that year. South Carolina was a credit reduction state in the 2010 tax year so South Carolina employers would have been subject to a 0.6% credit reduction if South Carolina did not qualify for relief under Code Sec. 3302(g) [South Carolina Department of Employment and Workforce (DEW) News Release, 11/15/11].

Other potential credit reduction states. Michigan employers may be subject to a 0.9% credit reduction, because of Michigan's failure to repay its outstanding federal loans for four consecutive years. Indiana employers may be subject to a 0.6% credit reduction, because of Indiana's failure to repay its outstanding federal loans for three consecutive years. Employers in all of the other states noted above (except South Carolina), and employers in the Virgin Islands, face a possible 0.3% credit reduction on their 2011 FUTA tax return.

Possible legislative fix? On November 4, House Democrats introduced the "Emergency Unemployment Compensation Act." The Act includes a provision that would eliminate the tax increase for credit reduction states in the 2011 tax year if the state enters into an agreement with the federal government to maintain the amount, duration, and access to regular, state-funded unemployment benefits.

Auto and Truck Fair Market Value Limitations Are Calculated for 2012

We have calculated the auto and truck fair market value limitations for the 2012 tax year under both the cents-per-mile method and the fleet-average valuation rule.

Cents-per-mile method. Under Reg § 1.61-21(a), if an employer provides a car to an employee that is available for personal use, the value of the personal use must generally be included in the employee's income and wages. There are several methods that can be used to value the personal use. Under the cents-per-mile method, the value of the personal use is determined by multiplying the standard mileage rate by the total miles driven in the vehicle for personal purposes. However, the cents-per-mile method may not be used if the automobile's fair market value (FMV) exceeds a certain amount, as adjusted for inflation. Inflation is measured by changes to the Consumer Price Index (CPI).

Based on the October 2011 CPI, *RIA* has determined that for employer-provided vehicles first made available to employees for personal use in 2012, the cents-per-mile method cannot be used if the value of a passenger automobile exceeds $15,900 ($15,300 in 2011).

Based on the October 2011 CPI, *RIA* has also determined that for employer-provided vehicles first made available to employees for personal use in 2012, the cents-per-mile method cannot be used if the value of a truck or van exceeds $16,700 ($16,200 in 2011).

Fleet-average valuation rule. Personal use of an employer-provided auto may be valued using the annual lease valuation (ALV) rule if an employer provides an employee with a company auto for an entire calendar year. The ALV, determined according to a table in Reg § 1.61-21(d)(2)(iii), is an IRS estimate of the annual cost of leasing an automobile, based on a four-year lease. An employer with a fleet of 20 or more autos may determine the ALV of each auto in the fleet as if its FMV were equal to the "fleet-average value." The "fleet-average value" is the average of the FMVs of each auto in the fleet. The fleet-average valuation rule can't be used to compute the annual lease value of any auto whose FMV exceeds an annually adjusted inflation-indexed figure.

RIA has determined, based on the October 2011 CPI, that the fleet-average valuation rule can't be used to determine the ALV of any auto if its FMV on the date it is first made available for employee personal use in 2012 exceeds $21,100 for a passenger auto ($20,300 in 2011), or $21,900 for a truck or van ($21,200 in 2011).

See Payroll Guide at ¶ 3580 for further information on the valuation of employer-provided vehicles.

President Signs Bill that Repeals 3% Withholding Rule for Government Contractors

On November 16, Congress passed H.R. 674, the "3% Withholding Repeal and Job Creation Act" (the Act). The Act repeals the controversial rule in Code Sec. 3402(t) under which federal, state, and local governmental entities would have been required to withhold 3% on payments made to vendors providing property or services, effective beginning with payments made *after Dec. 31, 2011.* The President signed the bill on November 21.

Reporting Agents Should Not Be Using Client's PIN to Electronically Sign Form 94x Series Returns

On the November payroll industry conference call, the IRS reminded reporting agents that they should not be using their client's personal identification number (PIN) when they electronically sign a return in the Form 94x series (e.g., Forms 940, 941, 944).

A reporting agent is an accounting service, franchiser, bank, or other person who complies with Rev Proc 2007-38, 2007-25 IRB 1442, and is authorized to electronically prepare Forms 940, 941, and 944 for a taxpayer. Reporting agents sign all of the electronic returns they file with a single *5-digit* PIN signature. They are issued their 5-digit PIN through the third-party data store (TPDS) during the e-file application process, as a result of selecting reporting agent as a provider option. Reporting agents may transmit their own returns, or may use the services of a third-party transmitter.

For purposes of the Employment Tax *e-file* System, a taxpayer is any business entity that has employees, and has a requirement to file any of the Form 940, 941, or 944 family of returns with the IRS. A taxpayer may choose to become a 94x OnLine e-Filer participant (IRS Authorized Signatory) using IRS-approved Commercial Off-the-Shelf (COTS) software. To become an IRS Authorized Signatory, a taxpayer must complete the 94x OnLine PIN Registration Process. Once approved, the IRS will send the taxpayer a *10-digit* PIN to electronically sign the 94x family of returns. The 10-digit PIN should only be used by the client or a business filer who is authorized to sign the return.

On the conference call, the IRS noted that many reporting agents are signing the returns using the taxpayer's *10-digit* PIN. This is incorrect. They should be using their own *5-digit* PIN.

An electronic return originator (ERO) is an authorized IRS e-file provider that originates the electronic submission of a return to the IRS. The ERO is usually the first point of contact for most taxpayers filing a return using IRS e-file. Although an ERO may also engage in return preparation, that activity is separate and distinct from the origination of the electronic submission of the return to the IRS. During the conference call, the IRS noted that an ERO may not sign an electronic return unless the ERO is also a reporting agent. If the ERO is not a reporting agent, the taxpayer must electronically sign the return.

Font size on employment tax returns. The IRS also advised payroll professionals preparing paper employment tax returns that they should be using at least a 10-point courier font when making entries on the returns. Paper returns are scanned by the IRS for processing. The IRS has difficulty reading entries that are not at least a 10-point courier font. This issue is particularly a problem in processing Form 941, Schedule R, *Allocation Schedule for Aggregate Form 941 Filers,* and Form 940, Schedule R, *Allocation Schedule for Aggregate Form 940 Filers.* The IRS cautions payroll professionals to not adjust the IRS font settings because it could cause the IRS system to automatically make some adjustments that will cause some of the dollar entries on the return not to display.

Payday Lender Needs Court Order Before Asking an Employer to Garnish a Debtor's Wages

The Federal Trade Commission (FTC) recently filed an action in federal court against payday lenders, Payday Financial, LLC, dba Lakota Cash and Big Sky Cash, for illegally attempting to garnish the wages of consumers who hadn't repaid the loans without a court order [FTC Press Release, 9/12/11].

Defendant Martin A. Webb operates Payday Financial, LLC, and several related businesses in Timber Lake, South Dakota. The defendants offer short-term, high-fee, unsecured payday loans from $300 to $2,525 to consumers throughout the country, advertising on television and through websites.

The FTC complaint alleges that when a consumer does not pay back a payday loan on time, the defendants send documents to the consumer's employer that mimic those used by federal agencies collecting debts owed to the government in an attempt to garnish the consumer's wages. Under federal law, the government can directly require employers to garnish wages for debts it is owed *without* obtaining a court order. But private creditors *must* obtain a court order before garnishing a debtor's wages. The complaint charges the defendants with violating the FTC Act by:

- misrepresenting to employers that the defendants are legally authorized to garnish an employee's wages, without first obtaining a court order;
- falsely representing to employers that the defendants have notified consumers about the pending garnishment and have given them an opportunity to dispute the debt; and
- unfairly disclosing the existence and the amounts of consumers' supposed debts to employers and co-workers without the consumers' knowledge or consent.

The complaint further alleges that the defendants have violated the FTC's Credit Practices Rule by requiring consumers taking out payday loans to consent to having wages taken directly out of their paychecks in the event of a default, and that the defendants have violated the Electronic Funds Transfer Act and Federal Reserve Board Regulation E by requiring authorization for electronic payments from consumers' bank accounts as a condition for obtaining payday loans.

The defendants have agreed to stop the challenged conduct pending trial.

Advisory Group Offers Suggestions for Improving Information Reporting Compliance

The Information Reporting Program Advisory Committee (IRPAC) has issued a new report that includes many recommendations on how to make information reporting compliance a little easier. The report includes recommendations in the following areas: (1) health care reporting on Form W-2; (2) reporting of death benefits; (3) reporting of employee business expense reimbursements; (4) stock option compensation reporting; and (5) TIN masking on payee 1099 forms [IR 2011-106, 10/26/2011].

Health care reporting on Form W-2. The "aggregate cost" of employer-sponsored health insurance coverage must generally be reported on employee W-2 forms (box 12, code "DD") beginning with the 2012 tax year (filed in 2013). Small employers (those filing fewer than 250 W-2 forms in the prior year) are not required to report the cost of health coverage on any forms required to be furnished to employees *until the 2013 tax year* (filed in 2014). IRPAC has many recommendations in this area. For example, IRPAC recommends that the IRS consider the implementation of a

separate form, other than Form W-2, for health care reporting. IRPAC believes that the W-2 form already includes as much data as can be reflected on a single page, and that the inclusion of additional data would undoubtedly cause the form to become a multiple page form. It also notes that mid-year plan changes, and changes in coverage status, marital status, or dependents may require many data records per employee, which could make W-2 preparation costly. In addition, IRPAC believes that if the health care reporting requirements were expanded in the future, it would be easier to put the new requirements on a separate form, rather than on Form W-2. It would also be less confusing to employees if the information was on a separate form.

Death benefits. Beginning with the 2009 tax year, death benefits from qualified and nonqualified deferred compensation plans paid to the estate or beneficiary of a deceased employee have been reported on Form 1099-MISC, *Miscellaneous Income.* These benefits were previously reported on Form 1099-R, *Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc.* This change is noted in the Form 1099-MISC instructions, but not in the Form 1099-R instructions. IRPAC recommends that the change be noted in the Form 1099-R instructions.

Employee business expense reimbursements. IRS officials have indicated that there has been a problem with individual taxpayers claiming itemized deductions on their personal income tax return for expenses that had been reimbursed by their employer. IRPAC recommends that the IRS consider modifying the requirements for current Code L, *Substantiated Employee Business Expense Reimbursements,* in box 12 of Form W-2 to require employers to indicate whether or not they had an accountable plan in place for reimbursement of qualified business expenses. For example, a "Y" could indicate that such a plan was offered during the tax year; and an "N" could indicate that such a plan was not offered.

Stock option compensation reporting. IRPAC believes that the non-compliance stock option compensation reporting instructions should include guidance on reporting for former employees on Form W-2, and for non-employees, such as directors, on Form 1099-MISC.

TIN masking on payee 1099 forms. The current, optional TIN masking pilot program allows filers of information returns to truncate an individual payee's Social Security number or other nine-digit identifying number on paper payee statements if the filers meet certain requirements. The program currently only applies to paper payee statements in the Form 1098 series (mortgage interest), Form 1099 series (various payments, including, for example, miscellaneous income), and Form 5498 series (IRA and other items). The program is not available for any information return filed with the IRS, or any payee statement furnished electronically. Truncation of payee employer identification numbers (EINs) or filer identifying numbers is not permitted.

IRPAC recommends that the optional TIN masking pilot program be expanded to cover: (1) other types of payee statements, including Form 3921, *Exercise of an Incentive Stock Option Under Section 422(b),* Form 3922, *Transfer of Stock Acquired Through an Employee Stock Purchase Plan Under Section 423(c),* and Form W-2 (although IRPAC understands that a statutory change is required for this change); (2) electronically furnished payee statements; and (3) truncation of a payee's EIN.

The entire IRPAC report is on the IRS website.

IRS Issues New Version of Form for Requesting a Taxpayer Identification Number

The IRS has posted a December 2011 version of Form W-9, *Request for Taxpayer Identification Number and Certification,* on its website.

A taxpayer who is required to file an information return with the IRS because it paid income to a person, asks the person to complete Form W-9. The form should only be completed by a U.S. person (including a resident alien). The person will enter its taxpayer identification number (TIN) on Form W-9. The TIN could be a Social Security number (SSN) or an employer identification number (EIN). The person must also certify that: (1) the number shown on the form is the person's correct TIN; (2) the person is not subject to backup withholding; and (3) the person is a U.S. citizen or other U.S. person (see Form W-9 instructions).

After completing the form, the person gives the form to the requester. Either the December 2011 or the January 2011 version of the form may be used. The tax classification box, which indicates whether a person is an individual, C corporation, S corporation, partnership, etc., does not currently have to be completed.

IRS Issues 2011 Version of Personal Income Tax Form Used by Misclassified Workers to Report Uncollected FICA Taxes

The IRS has posted the 2011 version of Form 8919, *Uncollected Social Security and Medicare Tax on Wages,* on its website. The form is filed by workers who were employees in 2011, but were treated as independent contractors by their employers, to report their share of uncollected Social Security and Medicare taxes due on wages earned. The form is filed by workers with their personal income tax return. Social Security and Medicare taxes will be credited to a misclassified worker's Social Security record if the worker files this form.

What's new. In column (c) of Form 8819, workers must enter a "reason code" to explain why they are filing the form. The reason codes are on page 1 of the form. For example, workers will enter "reason code A" if they filed Form SS-8, *Determination of Worker Status for Purposes of Federal Employment Taxes and Income Tax Withholding,* and they received a determination from the IRS that they should have been classified as an employee of the company, rather than an independent contractor.

In 2011, there is new "reason code H." Workers should enter "reason code H" if they were issued a Form W-2 and a Form 1099-MISC for services they provided to the same employer, but the amount reported on Form 1099-MISC should have been included as wages on Form W-2, since it was received for services provided as an employee. Examples of amounts that are sometimes erroneously included on Form 1099-MISC that should have been reported as wages on Form W-2 include employee bonuses, awards, travel expense reimbursements not paid under an accountable plan, scholarships, and signing bonuses. The form's instructions note that if "reason code H" applies to a worker's situation, the worker should not enter "reason code G" ("I filed Form SS-8 and have not received a reply") on Form 8919, and should not file Form SS-8.

New Legislation Allows Tax-Exempt Employers to Receive Payroll Tax Credit for Hiring Qualified Veterans

On November 16, Congress passed H.R. 674, the "3% Withholding Repeal and Job Creation Act" (the Act). The Act includes a provision that allows employers to claim the work opportunity tax credit (WOTC) on their income tax returns for qualified veterans who begin work for the employer *before Jan 1, 2013.* Under current law (Code Sec. 51(c)(4)), the individual must begin work for the employer before Jan. 1, 2012, for the employer to claim the WOTC.

The Act broadens the classes of qualified veterans on whom the credit may be claimed and increases the amount of the credit in some instances. In addition, the Act allows tax-exempt employers to receive a payroll tax credit for hiring qualified veterans. A tax-exempt employer is an employer described in Code Sec. 501(c) that is exempt from tax under Code Sec. 501(a).

The credit will be claimed against the OASDI (Social Security) tax that the exempt employer would otherwise have to pay on the wages of *all* of its employees during the "applicable employment period." The term "applicable employment period" means, with respect to any qualified veteran, the one-year period beginning with the day the qualified veteran begins work for the organization. The credit for hiring qualified veterans can be no greater than the OASDI tax that the employer would otherwise pay for employment of all the tax-exempt's employees during the applicable employment period. The credit will be calculated in the same way that the credit is calculated for taxable employers, with certain modifications.

The President signed H.R. 674 on November 21 [Code Sec. 52(c)(2) and Code Sec. 3111(e), as amended by Act Sec. 261(e)].

IRS Updates State and Local Government Employer Reference Guide

There is now a November 2011 version of Publication 963, *Federal-State Reference Guide,* on the IRS website. The publication provides state and local government employers with detailed information on wage reporting, Social Security and Medicare coverage, and FICA tax withholding. Topics addressed in the publication include determining worker status, public retirement systems, and Section 218 agreements (see Payroll Guide at ¶ 2655). In addition, there is discussion of employment tax and fringe benefit issues, and information to assist Indian tribal governments. The publication includes contact information for the IRS, the Social Security Administration, and the National Association of State Social Security Administrators.

The IRS Federal, State, and Local Governments (FSLG) website at http://www.irs.gov/govt/fslg has information about other related tax topics and upcoming

events. The FSLG newsletter may also be linked to from this website.

Stateline

New laws and developments are reported from the following states:

ARIZONA

Withholding. The Arizona Department of Revenue (ADOR) has established a new procedure for requesting 30-day extensions of time to file the annual withholding tax returns (Form A1-R, *Arizona Withholding Reconciliation Return,* and Form A1-APR, *Arizona Annual Payment Withholding Tax Return*). Employers may request two 30-day extensions for good cause. Previously, the ADOR maintained forms to request an extension of time to file. Now, employers must make a request for a 30-day extension in writing, which must include their identifying information, the reason for the request, and the name and signature of the officer or agent. The ADOR will send a letter to the employer only if the extension request is denied. The extension request extends the time to file, but does not extend the time to pay the tax due [Arizona Withholding Tax Procedure 11-1, 11/07/2011].

CALIFORNIA

Disability. The state disability insurance (SDI) withholding rate, which includes disability insurance (DI) and paid family leave (PFL), will decrease from 1.2% to 1.0% in the 2012 tax year. The taxable wage limit will increase from $93,316 for each employee per calendar year to $95,585 per employee. The maximum amount that can be withheld from an employee's pay in 2012 is $955.85 (currently, $1,119.79). The maximum weekly DI/PFL benefit will be $1,011 in 2012 [2012 California Employer's Guide (DE 44)].

Unemployment. Contribution rates for experienced employers will continue to range from 1.5% to 6.2% in the 2012 tax year. The new employer rate will remain at 3.4%. The above rates do not include the employment training tax (ETT) rate, which will remain at 0.1%. The taxable wage base will remain at $7,000. The maximum weekly unemployment benefit will be $450 in 2012 [2012 California Employer's Guide (DE 44)].

Wage and Hour. *Effective Jan. 1, 2012,* computer software professionals are exempt from overtime if they are paid at least $38.89 per hour (currently, $37.94 per hour), or (1) are paid on a salary basis, (2) earn an annual salary of at least $81,026.25 (currently, $79,050), and (3) are paid at least $6,752.19 monthly (currently, $6,587.50 monthly). Licensed physicians and surgeons are exempt from overtime beginning in 2012 if they are paid at least $70.86 per hour (currently, $69.13 per hour) [Department of Industrial Relations (DIR) Memorandum, *Overtime Exemption for Computer Software Employees,* 10/28/11; DIR Memorandum, *Overtime Exemption for Licensed Physicians and Surgeons,* 10/28/11].

Effective *Jan. 1, 2013,* employment terms between employers and commissioned employees must be in writing, and signed by both parties. Commissions do not include short-term productivity bonuses paid to retail clerks, or bonus and profit-sharing plans, unless they are paid at a fixed percentage of sales or profits as compensation for work performed. The written contract must include the method by which commissions will be computed and paid [L. 2011, A1396].

A federal district court has ruled that whether a California transportation company violated meal and rest break laws must be determined under the Federal Aviation Administration Authorization Act of 1994 (FAAA Act), rather than under California's meal and rest break laws. The court concluded that the company's activities fell within the scope of the FAAA Act because: (a) the FAAA Act preempts state regulation in the area of intrastate transportation, and (2) the company provided services that fell within the definition of "motor carrier" under the FAAA Act [*Dilts v. Penske Logistics, LLC,* DC CA, Dkt. No. 08-CV-318 JLS (BLM), 10/19/11].

Withholding. The Employment Development Department (EDD) has posted the 2012 versions of Publication DE 44, *California Employer's Guide,* and Publication DE 8829, *Household Employer's Guide,* on its website [EDD Tax Branch News #154, 11/16/11].

CONNECTICUT

Worker Classification. If Department of Revenue Services (DRS) auditors determine that a Connecticut employer has misclassified its workers, the employer may be subject to a large tax assessment, along with penalties and interest. The DRS is encouraging any employer in this situation to apply for the State's Voluntary Disclosure Program (VDP), rather than risk being subject to an audit. While the VDP is not specific to worker misclassification, employers can still apply for the program and receive favorable benefits, such as a limited lookback period and the elimination of penalties [DRS Notice, *Worker Misclassification Serious Problem in Connecticut,* 11/4/11].

DISTRICT OF COLUMBIA

Withholding. The recently-enacted "Income Tax Withholding Statements Electronic Submission Emergency Act of 2011" requires employers and payors who withhold income tax for 25 or more employees or persons to submit the withholding statements electronically, *beginning with employee and payee statements for the*

2011 tax year. The threshold was previously 50 or more employees or persons [L. 2011, Act 19-226].

ILLINOIS

Withholding. The Illinois Department of Revenue (IDOR) has posted a new version of Publication 121, *Illinois Income Tax Withholding for Household Employees,* on its website. Beginning in the 2011 tax year, if a taxpayer has household employees and is eligible to file federal Form 1040, Schedule H, *Household Employment Taxes,* the taxpayer may file and pay the Illinois withholding income tax annually on line 22 of Form IL-1040, *Illinois Individual Income Tax Return.* No registration is required to use this option. The IDOR instructs taxpayers who choose this option not to: (1) report household employee withholding tax on Form IL-941, *Illinois Withholding Income Tax Return;* or (2) pay Illinois withholding tax with Form IL-501, *Payment Coupon.* A taxpayer must notify the IDOR if it already files Form IL-941 solely for the purpose of reporting household employee income tax withholding and would like to convert to the annual Form IL-1040, line 22, reporting option for the next calendar year. Otherwise, penalties may be imposed [Publication 121, *Illinois Income Tax Withholding for Household Employees,* 11/1/11].

INDIANA

Withholding. A new Indiana Directive says that the National Football League and its Affiliates (NFL) are not required to withhold on wages and salaries earned by employees in connection with services rendered at a Super Bowl event in Indiana, unless the wages and salaries are paid to employees who are Indiana residents [Indiana Commissioners Directive 42, 12/01/2011].

MAINE

Withholding. Maine Revenue Services (MRS) has posted its 2012 *Withholding Tables for Individual Income Tax* booklet on its website, including the supplement to the booklet. The booklet includes both percentage method and wage bracket tables. The tables go into effect on *Jan. 1, 2012.* Withholding allowance amounts have not changed. Withholding tax rates are the same as in 2011, but the tax brackets have changed. The withholding adjustment for nonresident alien employees has also changed. Employers who had a combined tax liability for all Maine taxes of $16,000 or more from July 1, 2010 to June 30, 2011, must remit all Maine tax payments electronically in 2012. Semiweekly depositors must remit their withholding taxes electronically.

MICHIGAN

Unemployment. A spokesperson for the Michigan Unemployment Insurance Agency (UIA) has told *RIA* that unemployment tax rates for experienced employers will continue to range from 0.06% to 10.3% in the 2012 tax year. Delinquent employers will pay an additional 3% (i.e., 13.3% in total). The new employer rate for non-construction employers will remain at 2.7%. The new employer rate for construction employers will increase from 8.4% to 8.9% in 2012. The taxable wage base will remain at $9,000.

The Michigan Unemployment Insurance Agency (UIA) has announced that the solvency tax used to pay interest charges on the State's outstanding federal loans will continue to be in effect in 2012. Employers with negative reserve balances (about 35% of Michigan employers) pay this tax. The rate is a maximum 0.75% payable on the first $9,000 of each employee's wages ($67.50 per employee). Employers may avoid paying this tax if they make a voluntary contribution by *Nov. 30, 2011,* that brings their experience account balance up to a zero reserve balance or greater. Voluntary contributions may also help reduce employers' 2012 Michigan unemployment tax rates [Michigan Employer Advisor, Fall 2011].

Thousands of Michigan employers could potentially qualify for a tax credit on their state unemployment taxes in 2012 because of the additional federal unemployment (FUTA) taxes that they are expected to pay due to Michigan's failure to repay its outstanding federal loans. Positive reserve balance employers that have paid unemployment taxes for five or more years are eligible for a tax credit of up to 50% of the extra FUTA tax paid. Eligible employers may start applying for the credit in *February 2012.* The Michigan Unemployment Insurance Agency (UIA) will post the required application form (Form UIA 110) on its website. The Michigan tax credit will continue to be available as long as employers are required to repay federal loans through higher federal unemployment taxes [Michigan Employer Advisor, Fall 2011].

MINNESOTA

Unemployment. Contribution rates for experienced employers in the 2012 tax year will continue to range from 0.5% to 9.4%. The new employer rate will be 3.03%, except that new employers in high-experience-rated industries will pay 9.4%. The above rates include the 0.5% base rate. In addition, employers will pay: (1) an additional assessment fee of 14.0% (computed on the unemployment tax due), (2) a 0.10% workforce development enhancement fee (computed on taxable wages), and (3) a 0.5% federal loan interest assessment (computed on the sum of the unemployment tax due and the additional assessment fee). The taxable wage base will increase from $27,000 to $28,000 in 2012 [UI Minnesota website, *2012 Unemployment Insurance Tax Rate Information*].

MISSISSIPPI

Withholding. A spokesperson for the Mississippi Department of Revenue has told *RIA* that Mississippi has no current plans to revise the withholding tables in Payroll Guide at ¶ 25,601.

MONTANA

Withholding. A spokesperson for the Montana Department of Revenue has told *RIA* that Montana has no current plans to revise the withholding tables in Payroll Guide at ¶ 25,801.

NEBRASKA

Withholding. A notice posted on the Nebraska Department of Revenue (DOR) website advises employers that the State will not be mailing a new Nebraska Circular EN for 2012. Employers may continue to use the withholding tables in Payroll Guide at ¶ 25,902. The DOR must receive state copies of 2011 Forms W-2, W-2G, 1099-MISC, 1099-R, and the Nebraska reconciliation (Form W-3N) by *Feb. 1, 2012* [DOR website, *Withholding Reminders for All Nebraska Employers,* December 2011].

NEW JERSEY

Wage Payment. New regulations, effective Nov. 7, 2011, require employers who maintain wage and benefits records to "conspicuously post" a notice regarding this obligation. The notice may be posted in places where other employment notices (such as the minimum wage poster) are posted, or on the company's website (if accessible to all employees). All new hires must be given a copy of the notice at the time of hire. Current employees must receive a copy of the notice by *Dec. 7, 2011* [N.J. Admin. Code § 12:2-1.1 *et seq.*].

Withholding. A spokesman for the New Jersey Division of Taxation has told *RIA* that New Jersey has no current plans to revise the withholding tables in Payroll Guide at ¶ 26,225 and Payroll Guide at ¶ 26,228.

NEW MEXICO

Withholding. New Mexico has issued new wage bracket and percentage method withholding tables, *effective for wages paid beginning Jan. 1, 2012.* Allowance amounts have increased. Tax brackets have changed. Tax rates will remain the same as in 2011 [Publication FYI-104, *New Mexico Withholding Tax Effective Jan. 1, 2012*].

OHIO

Unemployment. The Ohio Department of Job and Family Services (DJFS) has announced that contribution rates for experienced employers will range from 0.7% to 11.4% in the 2012 tax year, including a 0.4% mutualized tax. The tax rate for delinquent employers will be 11.4%. New employers will continue to pay 2.7%, except that new employers in the construction industry will pay 7.0% (currently, 6.4%). The taxable wage base will continue to be $9,000 in 2012 [DJFS website, *Contribution Rates*].

Withholding. The Ohio Department of Taxation (DOT) has announced that there will be no changes to the current withholding tables for the 2012 tax year. Employers may continue to use the withholding tables in Payroll Guide at ¶ 26,704. The DOT has also issued the 2012 version of the income tax withholding instructions for employers. The instructions note that the DOT is offering a general tax amnesty program for most business taxes (including employer withholding) from May 1, 2012 through June 15, 2012 [DOT website, *Employer Withholding Taxes*].

Unofficial results from the municipal income tax elections on Nov. 8, 2011 are in. *Effective Jan. 1, 2012,* the Bexley income tax rate is scheduled to increase from 2% to 2.5% [Phone calls from *RIA* to municipalities, 11/14/ 11].

Unofficial results from the school district income tax elections on Nov. 8, 2011 are in. *Effective Jan. 1, 2012,* the Miami East school district rate is scheduled to increase from 1% to 1.75% [Phone calls from *RIA* to school districts, 11/14/11].

OREGON

Unemployment. The Oregon Employment Department has announced that Tax Schedule VIII will continue to be in effect for experienced employers in the 2012 tax year. Rates range from 2.2% to 5.4%. The new employer rate will continue to be 3.3% in 2012. The taxable wage base will increase from $32,300 to $33,000 in 2012 [Oregon Employment Department website, *2012 Unemployment Insurance Tax Information*].

PENNSYLVANIA

Withholding. W-2 forms may no longer be filed on diskettes [Pennsylvania Department of Revenue website, Forms and Publications, Forms for Business, Employer Withholding Tax, W-2 Filing General Information].

The Philadelphia Department of Revenue has posted the 2011 wage tax reconciliation and instructions on its website. The form must be filed by *Feb. 29, 2012.*

SOUTH CAROLINA

Unemployment. South Carolina has received conditional approval from the U.S. Secretary of Labor to receive the full 5.4% state credit on the 2011 federal unemployment tax (FUTA) return. South Carolina was a FUTA credit reduction state in 2010. South Carolina employers paid a higher FUTA tax rate than most other employers in 2010 because of the State's failure to repay its outstanding federal unemployment insurance (UI)

loans. In 2011, South Carolina will qualify for credit reduction relief because it has repaid over $180 million of federal UI loans and expects to have all of the loans repaid by 2015 [South Carolina Department of Employment and Workforce (DEW) News Release, *Businesses to Pay Lower Federal Unemployment Taxes (FUTA) for 2011,* 11/15/11].

WEST VIRGINIA

Wage Payment. The Supreme Court of Appeals of West Virginia has ruled that an employer did not violate the West Virginia Wage Payment and Collection Act (WPCA) when it made its final payment to two employees who lost their jobs after a merger by the next regular pay day after the termination. Under the WPCA, employees who are "discharged" must receive their final wages within 72 hours of termination, while "laid off" employees may be paid by the next regular pay day. The employees argued that they were "discharged" and should have received their final wage payment within 72 hours of termination. Therefore, they were entitled to three times their final wage payment as liquidated damages under West Virginia law. A "discharge" is defined under West Virginia regulations as "any involuntary termination or the cessation of performance of work by employee due to employer action." A "layoff" is defined as any involuntary cessation of an employee for a reason *not relating to the quality of the employee's performance or other employee-related reason.* In ruling that the employees had been laid off, the court noted that there was no dispute that the employees had been performing their jobs in a satisfactory manner through their last day of employment. They were let go because their positions had been eliminated as a result of the merger [*Lehman v. United Bank, Inc,* W. Va. Sup. Ct., Dkt. No. 101486, 11/10/11].

WISCONSIN

Withholding. The Wisconsin Department of Revenue (DOR) has updated its publication on the electronic filing of wage statements and information returns. Information in the publication reflects the DOR's position on laws enacted by the Wisconsin legislature that are effective as of *Nov. 1, 2011.* There are no substantive changes since the last version of this publication [Wisconsin Dept. Rev. Tax Publication 509, 11/01/2011].

Wisconsin has enacted legislation that, *retroactive to Jan. 1, 2011,* conforms to federal law that allows medical care reimbursements and benefits for an employee's nondependent adult child under the age of 27 to be excluded from gross income (see Payroll Guide at ¶ 3405). Previously, Wisconsin employers were required to add the fair market value of this health insurance benefit to the parent's income if a nondependent adult child was added to the plan. W-2 forms for the 2011 tax year should not include any amount that was previously added to employees' taxable wages in 2011 for this benefit. Box 17 of 2011 Form W-2 (State income tax), however, should include any amount withheld on this benefit during 2011 in addition to the total amount of Wisconsin income tax withheld on wages [L. 2011, S203; Wisconsin News for Tax Practitioners 11/07/2011, 11/07/2011].

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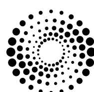

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