
Payroll Guide

□ Highlights □

FUTA Surtax No Longer in Effect Employers need to separately track FUTA taxable wages paid before July 1, and FUTA taxable wages paid after June 30, since the FUTA tax rates are different during those two periods.

IRS Increases Standard Mileage Rates The standard mileage rate for calculating the deductible cost of operating an automobile for business purposes has increased from 51 cents to 55.5 cents per mile.

President Obama Calls on Congress to Extend Payroll Tax Holiday President Obama and some members of Congress differ on whether to extend the 2% temporary reduction in the employee Social Security withholding tax rate beyond 2011.

IRS Panel Discusses Employment Tax Return Examination Process There are many resources available to help employers obtain a better understanding of the IRS examination process.

Major Changes Coming to Pennsylvania Local Earned Income Tax Collection System The changes go into effect in most Pennsylvania localities on Jan. 1, 2012.

Hiring Children to Work in the Family Business May Generate Some Employment Tax Savings Employing a child in the family business may reduce an employer's FICA and/or FUTA tax liability.

Ruling Roundup New rulings have been issued on COBRA election notices, overtime, and the FICA taxation of government agencies.

IRS Can't Apply Certain Overpayments to Other Tax Periods if Taxpayer Remits Taxes But Fails to File a Return A federal appellate court has denied an employer's refund claim even though the employer had overpayments in certain quarters that were not applied to its withholding tax liability.

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

FUTA Surtax No Longer in Effect

Beginning July 1, the 0.2% federal unemployment tax (FUTA) surtax is no longer in effect. The surtax was part of the 6.2% gross unemployment tax rate that employers pay on the first \$7,000 of wages paid annually to each employee (6% permanent tax rate, 0.2% temporary surtax). The surtax had been in effect in every year since 1976, when it was enacted by Congress on a temporary basis. The FUTA tax rate, before consideration of state unemployment tax credits, is 6.0%, effective July 1, 2011. Most employers are allowed to claim 5.4% in state unemployment tax credits against the FUTA tax rate. The elimination of the surtax will save employers \$14 a year on every worker who has at least \$7,000 of taxable wages.

So what does this mean for employers? As the IRS noted on its June 2 payroll industry conference call (see Payroll Guide Newsletter at ¶ 12.2), employers need to separately track FUTA taxable wages paid before July 1, and FUTA taxable wages paid after June 30, since the FUTA tax rates are different during those two periods. Employers whose FUTA tax is more than \$500 for the calendar year need to make quarterly FUTA deposits. The next quarterly payment is due on July 31, but that payment is based on taxable wages earned through June 30, so it will be computed using the 6.2% FUTA tax rate. However, the payment after that is due on Oct. 31, 2011, and it may be computed using the 6.0% FUTA tax rate if legislation is not enacted to retroactively reinstate the FUTA surtax beginning July 1, 2011. On an IRS conference call, Shelley Dockstader, National Account Manager in IRS Electronic Tax Administration, said that the IRS would have some mechanism in place under which an employer would not be assessed deposit penalties if it computed its unemployment tax deposits at a 6.0% rate, and legislation was enacted after that date to retroactively reinstate the surtax (see Payroll Guide Newsletter at ¶ 11.2).

The IRS is working on revising Form 940, *Employer's Annual Federal Unemployment (FUTA) Tax Return*, to take into account the elimination of the surtax. That return must be filed in January 2012.

There have been mixed signals from Washington on whether legislation will be introduced to retroactively reinstate the surtax.

IRS Increases Standard Mileage Rates

The IRS has increased the optional standard mileage rates for the final six months of 2011 due to the sharp rise in gasoline prices. The rate is 55.5¢ per

mile (previously 51¢ cents per mile) for all business miles driven between *July 1 and Dec. 31, 2011*. The new six-month rate for computing deductible medical or moving expenses is 23.5¢ per mile, up from 19¢ for the first half of 2011. The rate for providing services for charitable organizations is set by statute, not the IRS, and remains at 14¢ per mile [IR 2011-69, 06/23/2011; Ann 2011-40, 2011-29 IRB].

An employer that requires employees to supply their own autos may reimburse them at a rate that doesn't exceed 55.5¢ per mile for employment-connected business mileage in the second half of 2011, and the reimbursement will be treated as a tax-free accountable plan reimbursement. The employee must substantiate the time, place, business purpose, and mileage of each trip. Additionally, an employee's personal use of lower-priced company autos during the second half of 2011 may be valued at 55.5¢ per mile if the conditions specified in Reg § 1.61-21(e)(1) are met.

Employers paying a mileage allowance in excess of the standard rate must report the excess on Form W-2.

Taxpayers always have the option of calculating the actual costs of using their vehicle, rather than using the standard mileage rates.

The IRS generally only revises the standard mileage rates once a year (in the fall).

For further information on standard mileage rates, see Payroll Guide at ¶ 3806.

President Obama Calls on Congress to Extend Payroll Tax Holiday

President Obama called on Congress to extend the "payroll tax holiday" for another year during a June 29 press conference. The "payroll tax holiday" was included in Section 601 in the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010. The legislation temporarily reduced the employee Social Security withholding tax rate on wages from 6.2% to 4.2% for one year, effective with wages earned beginning Jan. 1, 2011.

The extension of the payroll tax holiday may meet some stiff resistance in Congress. On June 24, House members Ted Deutch (D-Fla.), Lloyd Doggett (D-Tex.), and Mark Critz (D-Pa.) wrote a letter to President Obama and other members of Congress urging them to resist any legislation that would extend or expand cuts to Social Security taxes. The Deutch, Doggett, Critz letter noted that the "2% payroll tax cut was passed last December as part of a tax compro-

mise. At the time, we warned that dipping into Social Security's revenue stream and replacing it with general fund transfers would set a dangerous precedent at a time of great economic and political uncertainty. Breaching this sacred funding stream would also make defending against further attacks more difficult. We further warned that it would be difficult to let so-called 'temporary tax cuts' expire and that a permanent 2% cut in the payroll tax would double Social Security's 75 year shortfall."

The letter also said that "Social Security's popularity comes from the direct contributions of American workers, who pay into the system now and benefit when they retire or become disabled. Polling shows that they do not mind contributing their part because they know what they are getting for it. Unless and until faith in Social Security has been restored to the American people through long-range solvency, short-sighted cuts to the program's revenue stream must not be part of any debt ceiling or budget deal" [Deutch, Doggett, Critz Letter to Congress, 6/24/11].

IRS Panel Discusses Employment Tax Return Examination Process

On June 22, the IRS conducted a webinar called "The Examination Process for Employment Tax Returns." The webinar was conducted by a panel of four experts, including Anita Bartels, IRS Program Manager in Employment Tax Compliance Policy, and Laird Macmillan, IRS Senior Policy Analyst in Employment Tax Compliance Policy.

What triggers an audit? Bartels discussed some of the circumstances that might trigger an audit. For example, if an employer files many 1099 forms but only one Form W-2, that might trigger an audit. The IRS may also look closely at an S corporation income tax return that reports very little compensation but has a lot of distributions. A Form W-2 and Form 1099 issued to the same person might also pique the IRS's interest, but it's possible for a person to receive both of these forms if he or she performs more than one service for the company. Bartels mentioned that some small businesses make the mistake of reporting a bonus to an employee on Form 1099 that should have been reported on Form W-2. Industry trends might also trigger an audit.

Accountable plan. Worker classification (employee vs. independent contractor) is generally a hot employment tax return examination topic, along with whether an employer has a legitimate accountable plan. Reimbursements (e.g., a mileage or tool allowance) are

tax-free to the employee and aren't subject to withholding or payroll taxes if made under an accountable plan. To be treated as made under an accountable plan, a reimbursement must meet all of the following requirements: (1) the reimbursed expense must be allowable as an income tax deduction and must be paid or incurred in connection with performing services as an employee of the employer (business connection), (2) each reimbursed expense must be adequately accounted for to the employer within a reasonable period of time (substantiation), and (3) any amounts in excess of expenses must be returned within a reasonable period of time (return of excess requirement) [Reg § 1.62-2].

Michael M. Lloyd, who works for the law firm of Miller & Chevalier, said that the accountable plan issue comes up in almost every employment tax audit that his firm participates in. If the IRS determines that an employer did not have a valid accountable plan, all of the reimbursements will be reclassified as taxable compensation that is subject to withholding taxes.

State ramifications. The results of an IRS examination are shared with many state workforce agencies as part of the Questionable Employment Tax Practice (QETP) initiative. More than 35 states have entered into individual information-sharing agreements with the IRS.

Further information. There are many resources available to help employers obtain a better understanding of the IRS examination process. IRS Pub No. 3498, *The Examination Process*, includes the following topics: (1) "Your Return Is Going To Be Examined," (2) "What to Do When You Receive a Bill from the IRS," (3) "What To Do if You Agree or Disagree with the Examination Results," (4) "How Do You Appeal a Decision?," and (5) "After the Examination." Page 11 of IRS Pub No. 594, *The IRS Collection Process*, has information on the collection of employment taxes. There is a video on the IRS Video Portal called "Your Guide to an IRS Audit."

The June 22 webinar will be archived on the IRS website.

Major Changes Coming to Pennsylvania Local Earned Income Tax Collection System

Pennsylvania Act 32 of 2008 (Act 32 or Local Tax Enabling Act; Pa. Stat. Ann. Title 53 § 6924.504 *et seq.*) creates a new local income earned income tax (EIT) collection system that will be fully operational on *Jan. 1, 2012*. The main objective of Act 32 is to reduce the complexity of the local EIT collection sys-

tem. The Act will reduce the number of local EIT collectors (tax officers) from approximately 560 to 21, beginning in 2012. There will be 69 tax collection districts or TCDs. Businesses with multiple locations across the State will be permitted to remit to the county tax collection district where they are headquartered, rather than to tens or even hundreds of collectors around the State, as is the case under current law.

Under current law, employee withholding is computed based on the tax rate at the employer's work site. Under Act 32, employers will be required to withhold at the higher of the earned income tax rate where the employee resides, or the nonresident tax rate for the municipality in which the employee works. For example, if an individual resides in a municipality/school district that imposes a total resident EIT rate of 1.6%, and the individual works in a municipality that imposes a municipal nonresident rate of 1.3%, a total EIT of 1.6% would be withheld from the employee. Employers can find the resident and work location withholding rates on the official tax register on the Pennsylvania Department of Community and Economic Development (DCED) website.

Within 30 days following the end of each calendar quarter, an employer with only one work site in a tax collection district must file a quarterly return and pay the amount of income taxes deducted during the preceding calendar quarter to the tax collector for the place of employment. Multi-work-site employers may, within 30 days following the last day of each month, file the tax return information and pay the total amount of income taxes deducted from employees in all Pennsylvania work locations other than Philadelphia to the tax collector in either the TCD where the employer's payroll operations are located, or to the TCD as determined by the DCED. Employers using this consolidated filing option must provide at least one month's notice to the tax collector in each of its work locations before making consolidated returns and payments. If an employer's headquarters is located outside of Pennsylvania, it may file a consolidated return/payment with any tax collector where the employer has a work site, other than Philadelphia. The DCED, in conjunction with stakeholders and current tax professionals, has made available, and will be developing, uniform tax forms for use by employers, employees, and tax collection committees.

Employees are required to complete a "Residency Certification Form" which will be used to identify the political subdivision (PSD) where the employee lives and the PSD where the employee works. See [http://](http://www.newpa.com/get-local-gov-support/municipal-statistics)

www.newpa.com/get-local-gov-support/municipal-statistics for assistance in locating and identifying PSD codes.

Four Pennsylvania counties (Chester, Lancaster, Lebanon, and Wyoming) have already adopted the new EIT collection system, rather than wait until Jan. 1, 2012. Of the four, only Chester County is requiring employers to use the new system before 2012. Chester County will not assess any interest or penalties against employers who did not use the new system in the first two quarters of 2011.

FAQs. The DCED has posted frequently asked questions (FAQs) on the new rules on its website. Here are some of the highlights:

Question. Where do we register for local income tax withholdings?

DCED answer. As an employer, for earned income taxes, you register with the earned income tax officer of the municipality/school district where your Pennsylvania business site is located. For local services taxes, you register with the local services tax officer of the municipality/school district where your Pennsylvania business site is located.

Question. Are we required to withhold local income taxes from all of our employees?

DCED answer. All employers with work sites within the taxing jurisdiction are required by law to deduct the earned income and local services taxes from their employees at that site if the tax is listed in the Earned Income Tax Register or Local Services Tax Register of the Department of Community and Economic Development.

Question. Must we withhold from employees who reside in Pennsylvania but work at our facility in another state?

DCED answer. The Local Tax Enabling Act does not require you to withhold earned income taxes from an employee who resides in Pennsylvania working for you in your facility in another state. Some employers do withhold and remit earned income taxes as a benefit to their Pennsylvanian residents who work out of state. The Act does not require employers to withhold local services taxes from an employee since this is a tax levied at the actual work location.

Question. Who is a nonresident?

DCED answer. A nonresident is anyone who resides outside the taxing district.

Question. Are we required to remit local tax withholdings to each nonresident's taxing jurisdiction?

DCED answer. Responsibility for transmitting withheld taxes of nonresidents to the employees' place of

residence rests with the tax officer, not with the employer.

Question. Must we also register and remit local tax withholdings to the school district?

DCED answer. The Act requires employers to register only with school districts that have a different collector than the municipality.

Question. Are there any exceptions for withholding local taxes for the municipality/school district?

DCED answer. Yes, Philadelphia and Pittsburgh have exceptions. Philadelphia falls under the Sterling Act (i.e., it's not covered under Act 32) and requires employers to withhold and remit earned income taxes for all their employees who reside in Philadelphia even if they are employed at a site outside of Philadelphia. The Pittsburgh City School District has a similar requirement.

Question. We have heard that Act 7 requires employers to deduct the tax weekly. Is this true?

DCED answer. If a municipality and school district's combined local services tax rate is more than \$10, employers must withhold the tax based on their number of annual payroll periods and are prohibited from withholding the tax in a lump-sum payment. Therefore, if an employer pays its employees weekly, the tax must be withheld weekly.

Hiring Children to Work in the Family Business May Generate Some Employment Tax Savings

Summer is here and your kids need something to do. Why not hire them to work in your family business? If you do, it may help build their self-esteem. Plus your employment tax liability may also be a little less than it would have been if you had hired an unrelated individual to perform the task.

Income tax withholding. Regardless of how the family business is organized, it probably will have to withhold federal income taxes on the child's wages. Usually, an employee who had no federal income tax liability for the prior year, and expects to have none for the current year, can claim exempt status. However, exemption from withholding can't be claimed if: (1) the employee's income exceeds \$950 and includes more than \$300 of unearned income (such as dividends), and (2) the employee may be claimed as a dependent on someone else's return (whether or not the child is actually claimed as a dependent). Keep in mind that the child probably will get a refund for part or all of the

withheld tax when he or she files a personal income tax return for the year.

Payments for domestic work in a parent's home are not subject to withholding tax. Withholding from remuneration for "services not in the course of the employer's trade or business" is only required if \$50 or more cash remuneration is paid for such services performed by the child in the calendar quarter, and the child is regularly employed by the parent to perform the services (see Code Sec. 3401(a)(4)).

FICA and FUTA taxes. Employment for FICA tax purposes doesn't include services performed by a child under the age of 18 while employed by a parent in a trade or business that is a sole proprietorship, or a partnership in which each partner is a parent of the child (see Code Sec. 3121(b)(3)(A)). This can generate some employment tax savings for the parent. For example, let's say a sole proprietor who averages \$120,000 of earnings from the business pays \$4,750 to his or her 17-year-old child in 2011. The sole proprietor's self-employment income would be reduced by \$4,750, a saving of \$137.75 (the 2.9% health insurance portion of the self-employment tax he or she would have paid on the \$4,750 shifted to the child). This doesn't take into account a sole proprietor's income tax deduction for one-half of his or her own Social Security taxes. That's on top of the \$268.38 ($.0565 \times \$4,750$) in employee FICA tax that the child saves by working for a parent instead of someone else. A similar but more liberal exemption applies for FUTA, which exempts earnings paid to a child under age 21 while employed by his or her parent (see Reg § 31.3306(c)(5)-1).

There is no FICA or FUTA tax exemption for employing a child in a corporation, even if it is controlled by the child's parent, or in a partnership that includes non-parent partners. The children are subject to the same rules that apply to all other employees.

There is further information on this topic in Payroll Guide at ¶ 2565.

Ruling Roundup

New rulings have been issued on COBRA election notices, overtime, and the FICA taxation of government agencies.

COBRA election notices. The Consolidated Omnibus Reconciliation Act (COBRA; 29 USCS 1166(a)(4)(A)) requires the administrators of covered group health plans to notify terminated employees that they have the option of continuing their benefits after the termination of their employment. 29 USCS

1166(a)(4)(A) does not specify what steps should be taken to notify the plan participant. In *Crotty v. Dakotacare*, CA8, 455 F.3d 828, 8/1/06, the Court of Appeals for the Eighth Circuit said that a good faith attempt to comply with a reasonable interpretation of the statute is sufficient. The Eighth Circuit has now ruled in *Hearst v. Progressive Foam Technologies, Inc.*, CA8, Dkt. No. 10-1253, 6/8/11, that a third party administrator made a good faith attempt to notify a terminated employee about the opportunity to temporarily continue COBRA coverage, even though the employee claimed that he never received the notice. The plan administrator had provided evidence that the election notice was mailed to the employee on May 3, 2007, as indicated by the post office's stamp on the administrator's mailing manifest, which was applied after the post office clerk verified that the envelope addressed to the employee was in fact mailed and that the name and the address on the envelope matched the name and address on the manifest.

In issuing its ruling, the Eighth Circuit said that merely claiming that the notice was never received did not, by itself, create a genuine dispute about any material issue of fact. The issue was not whether the employee received the notice, but rather whether the plan administrator "sent the notice by means reasonably calculated to reach the recipient."

Overtime. The U.S. Court of Appeals for the Ninth Circuit has ruled that house parents of homes for emotionally disturbed children were not eligible for overtime, because none of the homes they were working in qualified as an "institution primarily engaged in the care of the sick, the aged, mentally ill or defective" under 29 USCS 203(r)(2)(A) of the Fair Labor Standards Act (FLSA). Institutions covered under 29 USCS 203(r)(2)(A) must provide overtime to employees who work over 40 hours per week [*Probert v. Family Centered Services of Alaska, Inc.*, CA9, Dkt. No. 09-35703, 6/23/11].

The children in the homes attended local public schools and participated in other activities outside of the homes. The children received group therapy in the homes, but most of their medical and psychological treatment was provided outside of the homes. The house parents were not licensed medical or social service professionals.

The Ninth Circuit did not believe that the homes were "primarily engaged" in providing "care," as that term is used in 29 USCS 203(r)(2)(A). The court reasoned that since the children did not primarily receive their medical and psychological treatment on

the premises, the "homes" were primarily a residence for the children.

The court also did not believe that the homes qualified as an "institution." The Oxford English Dictionary defines an institution as "an establishment, organization, or association, instituted for the promotion of some object, esp. one of public or general utility, religious, charitable, educational, etc., e.g. a church, school, college, hospital, asylum, reformatory, mission, or the like."

The court also rejected the house parents' argument that the homes were similar to nursing homes. The Department of Labor, Wage and Hour Division, Field Operations Handbook states that nursing homes may also include "rest homes, convalescent homes, homes for the elderly and infirm, and the like." A nursing home may be able to qualify as an institution under 29 USCS 203(r)(2)(A). The court said that the homes did not qualify as nursing homes because the children left the homes to attend school, participate in activities, and receive medical and psychological treatment. Residents of nursing homes are not necessarily confined completely to those facilities, but the expectation is that the vast majority of their time is spent there. In addition, nursing home facilities are staffed with professionals, not simply house parents, and residents may be expected to receive substantially greater "care" in those facilities.

FICA taxation of government agencies. The IRS has issued a Chief Counsel Advice (CCA) that says that for purposes of the Social Security wage base (currently, \$106,800), branches, departments, and agencies of the federal government are considered to be one employer. However, agencies are not required to coordinate with other agencies to insure that the agencies together do not exceed the maximum Social Security wage base. Employees who have too much Social Security tax withheld will get the money back when they file their personal income tax returns. Employers who overpaid FICA taxes must follow the procedures used by other employers to correct the error (i.e., credit the overpayment to another return, or file a refund claim; see Payroll Guide at ¶ 4275) [Chief Counsel Advice 201125015].

IRS Can't Apply Certain Overpayments to Other Tax Periods if Taxpayer Remits Taxes But Fails to File a Return

The Court of Appeals for the Fifth Circuit has denied an employer's refund claim, even though the employer had overpayments in certain quarters that were

not applied to its withholding tax liability [*Nicholas Acoustics & Specialty Company, Inc. v. U.S.*, CA5, 107 AFTR 2d 2011-2543, 6/15/11].

The facts. Between 1999 and 2003, Nicholas Acoustics & Specialty Company, Inc. (Nicholas) remitted payroll taxes to the IRS, but failed to file any tax returns. The funds remitted were not for the exact amount owed, but were instead an estimate of the amount due. The company occasionally paid taxes in excess of its liability. Nicholas erroneously assumed that the IRS could apply all of its overpayments to other quarters in which it had underpaid its tax liability.

In 2003, the IRS audited Nicholas due to its failure to file its tax returns. After the audit, Nicholas filed returns for the missing quarters, which allowed the IRS to refund overpayments or credit the overpayments to certain quarters in which a deficit had occurred. The IRS said that it could only refund or credit Nicholas's overpayments for returns due within the past three years because of the statute of limitations. Nicholas still owed taxes for the period in question, even after the IRS made the adjustments. The IRS filed a lien against Nicholas, which Nicholas paid before seeking a refund. Nicholas contended that the shortfall wouldn't have occurred if the IRS had applied all of the company's overpayments to future or past quarters.

IRS methodology. The IRS classifies a remittance of taxes as either a payment or a deposit. If a tax remittance is determined to be a deposit, it is treated like a cash bond, which the IRS simply holds, and a taxpayer may seek a refund of the deposit at any time (see *Rosenman v. U.S.*, U.S. Sup. Ct., 33 AFTR 314, 1/29/45). But if a remittance is deemed a payment, the taxpayer may only recover the money by filing a timely claim for refund (see *Miller v. U.S.*, Ct Fed Cl, 86 AFTR 2d 2000-7058, 11/09/00).

Previous court rulings. In *Deaton v. Comm.*, CA5, 97 AFTR 2d 2006-984, 2/9/06, and *Baral v. U.S.*, U.S. Sup. Ct., 85 AFTR 2d 2000-941, 2/22/00, federal courts determined that a remittance that discharges or pays a deemed or assessed tax liability constitutes a payment. In addition, a remittance also constitutes a payment if it's made under an Internal Revenue Code section for which the statute's plain language states that the remittance is to be "deemed paid."

In *Baral*, the Supreme Court looked at an individual's refund claim for income tax partially paid through his employer's wage withholding and partially paid through his own remittance of the estimated tax. The Supreme Court held that the tax was paid when the money was remitted, not when the tax was assessed.

The Supreme Court focused on Code Sec. 6513(b)(1) and Code Sec. 6513(b)(2), which govern employee withholding taxes. It noted that remittances which are governed by a "deemed paid" provision akin to Code Sec. 6513 are "payments" subject to Code Sec. 6511. Under Code Sec. 6511(a), a claim for credit or refund of an overpayment must be filed by the taxpayer within two years from the time the tax was paid if no return was filed by the taxpayer.

The ruling. The Court of Appeals for the Fifth Circuit agreed with the IRS that the employment tax remittances constituted payments and that refunds of the payments were subject to the statute of limitations period in Code Sec. 6511. The Fifth Circuit looked at the plain language in Code Sec. 6513(c)(2) and said that it was a "deemed paid" provision subject to Code Sec. 6511's limitations period for refunds. Similarly, Reg § 31.6302-1(h)(9) deems a remittance of employment taxes to be a payment.

Stateline

New laws and developments are reported from the following states:

ALABAMA

Withholding. A refund program for the invalid Jefferson County occupation fee is under way. A court-appointed "Settlement Administrator" is in charge. Employees who paid the fee during the period from Jan. 12, 2009 through Aug. 13, 2009 are entitled to a refund. By *July 13, 2011*, employers must complete an *Employee Refund Data Form* to help the Administrator determine how much is owed to whom. The Administrator will send the employer a check and the employer will distribute that money to employees [Letter from Edgar C. Gentile, III, Refund and Settlement Administrator, Jefferson County Occupational and Business License Tax, 6/23/11].

CALIFORNIA

Wage and Hour. The U.S. Court of Appeals for the Ninth Circuit has ruled that it is possible for 2,000 unlicensed junior accountants at PricewaterhouseCoopers (PwC) to be exempt from overtime under either the professional or administrative exemption in California law, even though the accountants do not have CPA licenses. This issue must be decided in a court of law, as the parties to the lawsuit dispute several key material facts [*Campbell v. Pricewaterhousecoopers, LLP*, CA9, Dkt No. 09-16370, 6/15/11].

CONNECTICUT

Withholding. New legislation revises the penalties for failing to make a withholding tax payment electronically,

if required to do so under the law, *effective beginning Jan. 1, 2012*. The legislation also allows the Department of Revenue Services (DRS) to require payers that withhold Connecticut income tax from nonpayroll amounts to make the payment electronically if the amount withheld was more than \$2,000 during the lookback year. Another provision in the legislation, applicable to tax years *beginning after Dec. 31, 2010*, increases the statute of limitations period from three to six years with respect to when the DRS may send a tax deficiency assessment notice to: (1) employers that omit from their withholding tax return more than 25% of the amount required to be withheld from employee wages, and (2) pass-through entities that omit more than 25% of the amount required to be withheld from a nonresident member. *Effective July 1, 2011*, the legislation requires a successor employer who buys a business or its entire stock from an employer to withhold enough funds from the purchase price to cover any withholding tax that the previous owner may owe until the previous employer produces either a DRS receipt for the tax payment or a DRS certificate that no taxes are due. The successor employer will be personally liable for the payment of the unpaid withholding taxes of the previous employer if it does not reduce its purchase price in this way [L. 2011, H6652].

FLORIDA

Unemployment. Governor Rick Scott has signed legislation that reforms the State's unemployment compensation (UC) program. Beginning in August, claimants will be required to contact five potential employers weekly and provide this information via the Internet during their bi-weekly certification for benefits. In order to receive benefits, claimants filing new claims will be required to complete an initial online skills assessment. If a claimant's severance pay per week is equal to, or greater than, the claimant's weekly benefit amount, the claimant will not be entitled to benefits for that week. *Beginning in 2012*, the maximum unemployment benefit period will be reduced from 26 weeks to somewhere between 12-23 weeks, depending on the current state unemployment rate. Employers will be able to continue to pay their quarterly unemployment taxes in installments through 2014. More employee leasing companies will be able to obtain tax information on their clients from the Florida Agency for Workforce Innovation. The Governor believes that the reforms in the legislation, plus a revision to the unemployment tax rate computation, will reduce employer taxes by approximately \$33 per employee, *beginning Jan. 1, 2012* [L. 2011, H7005].

HAWAII

Wage Payment. *Effective July 1, 2011*, an employer commits the offense of "nonpayment of wages" if it intentionally or knowingly (or with the intent to defraud) fails or refuses to pay wages to the employee, unless the em-

ployer is following a federal or state statute or a court order. In addition to any other penalties, a person convicted for nonpayment of wages will be fined not less than \$2,000, nor more than \$10,000, for each offense. Additionally, an employer may be ordered by the court to pay the employee the greater of the unpaid wages or the value of the employee's labor under federal minimum wage law. The employee may also commence a civil action against the employer to recover the wages [L. 2011, H141].

MAINE

Unemployment. Recently-enacted legislation calls for the establishment of a stakeholder group to determine the most appropriate amount of time an employer may employ a worker without the employer being subject to Maine's unemployment compensation rules [L. 2011, H829].

Withholding. New Maine legislation includes a provision that revises personal income tax rates beginning in 2013. In addition, *effective for tax years beginning in 2011*, compensation for personal services performed by nonresident employees in Maine is Maine-source income, and, therefore, subject to tax if the nonresident is performing personal services in Maine for more than 12 days during the tax year, and the nonresident earns or derives more than \$3,000 in gross income during the year from all sources in the State. Certain personal services performed in Maine do not count against the 12-day threshold [L. 2011, H778].

MASSACHUSETTS

Withholding. The Massachusetts Department of Revenue (DOR) is providing some relief to taxpayers who live, and businesses whose principal place of business is located, in the counties of Hampden and Worcester, which have been declared federal disaster areas due to the storms on June 1. The relief does not generally apply to withholding tax returns and payments, but any applicable late filing payment penalties will generally be waived on withholding tax returns and payments if the taxpayer has reasonable cause for the late filing [Massachusetts Technical Information Release 11-4, 06/23/2011].

MICHIGAN

Withholding. The Michigan State Court of Appeals has ruled that a taxpayer was not eligible for relief from several withholding tax assessments because the taxpayer failed to file a timely appeal. Mich. Comp. Laws Ann. § 205.22(1) requires a taxpayer to appeal any assessment within 35 days after the issuance of the assessment. The final assessments were issued on April 28, 2008, but the taxpayer claimed that it never received them. The taxpayer filed the appeal on July 27, 2009, after receiving a final demand letter on July 16, 2009.

The Court of Appeals determined that the Michigan Department of Treasury had complied with state law by sending the final assessments to the taxpayer's last known address by certified mail. Proof of delivery is not required. In addition, the court noted that the appeal period could not have begun when the taxpayer received a final demand letter because only assessments, decisions, or orders can be appealed. It was also proven that the taxpayer had actual notice of the assessments by May 19, 2009, but did not petition for appeal until July 27, 2009 (i.e., more than 35 days after having copies of the assessments) [*PIC Maintenance v. Department of Treasury*, Mich. Ct. App., Dkt. No. 298358, 6/16/11].

MINNESOTA

Unemployment. If there is no legislative action, the workforce development fee will be reduced from 0.12% to 0.10% of taxable wages, *effective with taxable wages earned beginning July 1, 2011* [Minnesota Unemployment Insurance website].

Withholding. The state legislature has adjourned without reaching an agreement on budget appropriations to fund governmental operations. Most state agencies, including the Minnesota Department of Revenue (DOR), will not continue non-critical services beyond June 30, 2011. Even though there is a government shutdown, taxpayers must continue to file tax returns and pay taxes by the lawful due dates. The DOR will continue to process payments it receives (both electronically and by check) and deposit funds into the State's bank. The DOR's website should be operational, including applications to file and pay, and register and/or update business information. If applications are not operational, taxpayers who are required to electronically file and/or pay should file on paper and/or pay by check [DOR Revenue Connection #3, 6/21/11].

MISSOURI

Unemployment. Employers will pay an additional assessment with their second quarter 2011 unemployment tax return to help Missouri pay the interest due on its federal unemployment insurance loans. The Missouri Department of Labor (DOL) has told *RIA* that the amount due will be 0.0931895% of an employer's taxable wages for calendar year 2010. Employers will pay \$12.11 (i.e., $0.0931895\% \times \$13,000 = \12.11) on each employee who earned wages equal to or greater than the 2010 taxable wage base of \$13,000.

NEVADA

Employer Tax. New legislation, *effective July 1, 2011*, exempts businesses with a payroll of \$250,000 per year or less (\$62,500 per quarter) from the modified business tax. Employers subject to the tax will pay it at a 1.17% rate on total wages over \$62,500 per quarter. The legislation is in effect until July 1, 2013. Employers with

payroll that did not exceed \$62,500 per quarter paid the business tax at a 0.5% rate on total wages until July 1, 2011 [L. 2011, A561, Sec. 4].

NEW HAMPSHIRE

Wage and Hour. New legislation, *effective Aug. 21, 2011*, ties the New Hampshire minimum wage rate into the federal minimum wage rate. Both rates are currently \$7.25 per hour. Prior to the legislation, New Hampshire could adopt a minimum wage rate that was different from the federal rate [L. 2011, H133].

NEW JERSEY

Unemployment. Governor Chris Christie has signed legislation that reduces the unemployment tax rate increase that was scheduled to take effect on *July 1, 2011*. Rates for experienced employers will now be determined under Rate Schedule D. Rates will range from 0.6% to 6.4%. Rates were previously scheduled to be determined under the higher Rate Schedule E and were to include an additional surcharge. Rates in the July 1, 2010 to June 30, 2011 fiscal year were determined under the lower Rate Schedule C. The new employer rate is 3.1%, effective July 1, 2011 [L. 2011, H3819].

NEW YORK

Withholding. Gov. Andrew M. Cuomo has signed "The Marriage Equality Act" into law. The Act legalizes same-sex marriages in New York State. The Department of Taxation and Finance has not yet issued any guidance on how the new law will affect withholding taxes [L. 2011, A8354].

NORTH CAROLINA

New Hire Reporting. New legislation requires all employers to use the federal E-Verify system to verify the employment eligibility of new hires. The law has staggered effective dates, going into effect on Oct. 1, 2011 for county and municipal employers. It becomes effective Oct. 1, 2012 for employers with 500 or more employees. The requirements are effective on Jan. 1, 2013 for employers with 100-500 employees, and on July 1, 2013 for employers with 25 or more, but fewer than 100 employees. Employers will be subject to penalties for repeated violations of this provision [L. 2011, H36].

NORTH DAKOTA

Withholding. North Dakota is providing tax relief to individuals and businesses in Ward, McHenry, and Renville counties who were affected by the recent flooding along the Souris River. These taxpayers have until *Aug. 15, 2011* to file returns and pay taxes that otherwise would have been due by June 30, 2011. The State will not assess penalties or interest on these returns and payments if filed and paid by the August 15 deadline [North Dakota Tax Commissioner News Release, *Tax*

Department Provides Filing Relief for Taxpayers Impacted by Souris River Flooding, 6/27/11].

OREGON

Child Support. New legislation, *effective Jan. 1, 2012*, increases the amount that may be withheld from an employee's lump-sum payment to pay for child support from 25% to 50% of the total payment [L. 2011, S43].

Employer Taxes. The Oregon Department of Revenue is reminding employers with business locations outside the transit district boundaries (Eugene/Springfield or Portland metropolitan areas) that they are still required to report and pay transit taxes on wages earned by any employee who is physically working within such boundaries. Also, an employer must report and pay Lane Transit District taxes on wages earned by an employee who teleworks from a home within the transit district boundaries, even if the employer is located outside of the Lane Transit District [Oregon DOR Payroll Tax News Digest, Vol. 38, Issue 1, 6/29/11].

PENNSYLVANIA

Unemployment. New legislation revises the circumstances under which employers may be relieved from benefit charges. In addition, maximum weekly unemployment benefits are now calculated using a 36-month period (currently, a 12-month period) ending on the June 30th of the preceding year. The legislation also allows employers to establish a voluntary work-sharing program as an alternative to employee layoffs. *Beginning in 2013*, unemployment benefits will be reduced in any week in which a claimant receives severance pay [L. 2011, S1030].

Withholding. New legislation, *effective July 1, 2011*, eliminates the scheduled reductions in the Philadelphia wage tax rate that were scheduled to take effect beginning with the July 1, 2011 fiscal year. As a result, the Philadelphia wage tax rate will continue to remain at 3.928% for residents (includes the 1.5% Pennsylvania Intergovernmental Cooperation Authority tax) and 3.4985% for nonresidents *from July 1, 2011 to June 30, 2012*, and subsequent fiscal years. The Philadelphia wage tax rate for residents had been scheduled to decrease to 3.8722% on July 1, 2011. The rate for nonresidents had been scheduled to decrease to 3.4370% on July 1, 2011 [Philadelphia Bill No. 110138].

SOUTH CAROLINA

New Hire Reporting. New legislation, *effective Jan. 1, 2012*, requires all public and private employers who are required by federal law to complete and maintain federal employment eligibility verification forms to register and participate in the federal E-Verify program to verify the work authorization of every new employee no later than

three business days after the new employee begins work. Penalties for violating the law include suspension of the employer's business license, and possible reinstatement fees for second and subsequent offenses. Prior to Jan. 1, 2012, employers may use a driver's license or the E-Verify program to determine whether a worker is eligible to work in the United States [L. 2011, S20].

TEXAS

Child Support. *Effective Sept. 1, 2011*, employers with 50 or more employees (previously, 250 or more employees) are required to remit child support payments by electronic funds transfer or electronic data interchange [L. 2011, H1674].

Unemployment. The Texas Workforce Commission (TWC) June 2011 tip of the month reminds employers that State law presumes that workers are employees unless the business can demonstrate otherwise. Payroll Guide at ¶ 15,602 contains a list of common law factors used by the TWC in making a worker classification determination [TWC website, Tax Tip for June 2011].

Effective Sept. 1, 2011, an employer who reasonably relies on an initial Texas ruling or court determination to classify a worker as an independent contractor will not be subject to penalties, interest, or sanctions if a subsequent ruling or determination concludes that the worker should have been classified as an employee. The employer may rely on the initial ruling or determination until the earlier of: (a) the effective date of the subsequent ruling or determination invalidating the ruling or determination on which the employer reasonably relied; or (b) the third anniversary of the due date of a contribution based on the services in question [L. 2011, H2579].

Effective Sept. 1, 2011, an individual is disqualified from receiving unemployment benefits in any period in which the individual is receiving severance pay [L. 2011, H14].

UTAH

Withholding. Utah Informational Publication 43, 06/01/2011, *Electronic Funds Transfer—Paying Tax by ACH Credit*, has been updated to include 2011 and 2012 monthly and quarterly due dates. Taxpayers must be pre-authorized to make ACH credit payments. The ACH system requires at least one day to transfer funds, so taxpayers must authorize payments at least one business day before the due date to timely pay their tax obligations. Some banks may require more than one day to process EFT payments.

WASHINGTON

Child Support. Washington's Division of Child Support (DCS) has developed a database of employers to whom it sends income withholding orders (IWO). The

primary use of the database is for IWOs, but the DCS has included multiple address types in the database, including a "medical" address where the DCS can send a national medical support notice (NMSN) if the address for the NMSN is different from the IWO address. Any business that receives an IWO and a NMSN from DCS, and that has a separate mailing address for the processing of the NMSN, should contact DCS Analyst Mark Biggs at (360) 664-5425 to let him know to where the NMSN should be mailed [E-mail from Mark Biggs, 6/28/11].

Unemployment. The taxable wage base for unemployment tax purposes will increase from \$37,300 to \$38,200 in 2012. Also, weekly unemployment benefits

will range from \$138 to \$583, *effective for claims filed after July 2, 2011* [Washington Employment Security Department News Release, 6/23/11].

WEST VIRGINIA

Withholding. The Kanawha Circuit Court has granted a temporary injunction prohibiting the start of the 1% municipal occupation tax in the City of Huntington on July 1. Employers should continue to collect and remit the \$3 per week city service fee that had been scheduled to expire on June 30 and to use the current city service fee withholding forms. Municipal occupation tax forms will not be mailed to employers at this time [City of Huntington, *Tax Reform Delayed*]. pa277-7bjxc



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