

---

# Payroll Guide

---

## □ Highlights □

**Could Be Wide Discrepancy in FUTA Tax Rates for the 2011 Tax Year** The FUTA tax computation for the 2011 tax year could be difficult due to the expiration of the FUTA surtax and the fact that many more states will be credit reduction states in 2011.

**IRS Discontinuing High-Low Per Diem Rates** The IRS didn't receive any feedback when it asked the public whether it should continue to offer this business travel substantiation method.

**Client Letter Highlights August State Payroll Tax Changes** There are new withholding tables, special assessments, and new E-Verify rules.

**IRS Warns Employers about Bogus EFTPS E-mail Scam** The e-mail contains a link that, if clicked on, may result in the download of malicious software.

**IRS Updates Form 941 Specifications** There is now IRS guidance on how to prepare paper and laser-printed substitutes of Form 941, Schedule R.

**IRS Revises TIN Matching Program Publication** There is now a July 2011 version of IRS Publication 2108-A, *On-Line Taxpayer Identification Number (TIN) Matching Program*, on the IRS website.

**IRS Requires Manual Key Entry of ITINs on 2011 Form W-2** E-filers could be subject to a written reprimand, suspension, or expulsion from the e-file program for failing to follow this rule.

**Case Roundup** Federal courts have recently issued rulings on an employment tax refund claim, and whether an employer violated federal law when it terminated a military veteran six months after his return to work following his tour of duty.

**Deferred Compensation Plan Did Not Violate Colorado or Louisiana Wage Payment Laws** Employees did not have to participate in the plan if they didn't want to.

**Webcast Discusses Payroll Tax Implications of Sending Workers to Switzerland** Foreign nationals working in Switzerland are subject to a monthly withholding tax on their employment income.

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

## Could Be Wide Discrepancy in FUTA Tax Rates for the 2011 Tax Year

The FUTA tax rate computation for the 2011 tax year is shaping up to be the most difficult one in years, due to the expiration of the FUTA surtax on July 1, and the likelihood that employers in many states will see a reduction in their state unemployment tax credits used to offset the FUTA tax.

*FUTA surtax.* Beginning with wages paid on July 1, 2011, the 0.2% federal unemployment tax (FUTA) surtax is no longer in effect.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 paid on the first \$7,000 of wages paid annually to each employee (6% permanent tax rate, 0.2% temporary surtax). The FUTA tax rate, before consideration of state unemployment tax credits, is 6.0%, effective with wages paid beginning July 1, 2011. Most employers are allowed to claim 5.4% in state unemployment tax credits (known as the “normal credit”) against the FUTA tax rate if they timely pay their state unemployment taxes, making the net FUTA rate 0.6% beginning with wages paid on July 1 (0.8% on wages paid from January 1 to June 30, 2011).

*State unemployment tax credits.* 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 normal credit available is reduced. This effectively increases the employer's FUTA tax rate by 0.3% annually, beginning with the second consecutive January 1 in which the loan isn't repaid. As of July 16, 2011, 29 states and the Virgin Islands have borrowed money from the federal government to help keep their unemployment insurance (UI) trust funds solvent. Many of these states have had outstanding loans with the federal government for two consecutive years. If these loans are not repaid by Nov. 10, 2011, employers in these states will not be eligible to claim 5.4% in state unemployment tax credits against the FUTA tax rate.

*Possible 2011 FUTA tax rates.* Employers in states with no outstanding federal loans will have a net FUTA tax rate of 0.8% in the first half of 2011, and a net FUTA tax rate of 0.6% in the second half of 2011. The net FUTA tax rate for employers in other states will be 0.3% higher if the state has had an outstanding loan with the federal government for no more than two consecutive years. The net FUTA tax rate will be even higher in states with an outstanding loan with the federal government for more than two consecutive years. Here is what the tax rates look like, based on information available as of July 20, 2011:

- *States currently eligible for a net FUTA tax rate of 0.8% in the first half of 2011, and a net FUTA tax rate of 0.6% in the second half of 2011.* Employers in Alaska, Arizona, Colorado, Delaware, the District of Columbia, Hawaii, Iowa, Kansas, Louisiana, Maine, Maryland, Massachusetts, Mississippi, Montana, Nebraska, New Hampshire, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Tennessee, Texas, Utah, Vermont, Washington, West Virginia, and Wyoming are all currently eligible for these rates because, as of Jan. 1, 2011, these states did not have outstanding loans with the federal government for two consecutive years.
- *States tentatively scheduled to pay a net FUTA tax rate of 1.1% in the first half of 2011, and a net FUTA tax rate of 0.9% in the second half of 2011.* Employers in Alabama, Arkansas, California, Connecticut, Florida, Georgia, Idaho, Illinois, Kentucky, Minnesota, Missouri, Nevada, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, the Virgin Islands, Virginia, and Wisconsin will pay these rates unless their federal loans are repaid by Nov. 10, 2011, because, as of Jan. 1, 2011, these states had outstanding loans with the federal government for two consecutive years.
- *States tentatively scheduled to pay a net FUTA tax rate of 1.4% in the first half of 2011, and a net FUTA tax rate of 1.2% in the second half of 2011.* Employers in Indiana and South Carolina will pay these rates unless their federal loans are repaid by Nov. 10, 2011, because, as of Jan. 1, 2011, these states had outstanding loans with the federal government for three consecutive years.
- *Michigan employers tentatively scheduled to pay a net FUTA tax rate of 1.7% in the first half of 2011, and a net FUTA tax rate of 1.5% in the second half of 2011.* Michigan employers will pay these rates unless Michigan's federal loans are repaid by Nov. 10, 2011, because, as of Jan. 1, 2011, Michigan had outstanding loans with the federal government for four consecutive years.

It's possible that legislation could be enacted that would retroactively reinstate the FUTA surtax, effective July 1, 2011.

## IRS Discontinuing High-Low Per Diem Rates

The IRS has announced that it will soon be discontinuing the high-low method for substantiating lodging, meal, and incidental expenses incurred in traveling away from home [Ann 2011-42, 2011-32 IRB].

*Background.* An employer may pay a per diem amount to an employee for business travel, instead of reimbursing actual substantiated expenses for away-from-home lodging, meal, and incidental expenses. If the rate paid does not exceed IRS-approved maximums, and the employee provides simplified substantiation (time, place, and business purpose), the reimbursement is treated as if it were made under an accountable plan (i.e., it is not subject to income tax, or payroll tax withholding, and is not reported on the employee's Form W-2). Receipts for expenses aren't required. In general, the IRS-approved per diem maximum is the U.S. General Services Administration (GSA) per diem rate paid by the federal government to its workers on travel status. This rate varies from locality to locality. The rates in effect for the federal government's fiscal year period beginning Oct. 1, 2010 are in Payroll Guide at ¶ 3807.

*High-low per diem rates.* As an alternative to reimbursing actual substantiated expenses, or paying IRS-approved per diem amounts to employees on business travel (actual per diem method), employers may currently use a simplified method, under which there is one per diem rate for "high-cost" areas and another rate for all other areas. Areas that are currently considered high-cost are those that have a federal per diem rate of \$196 or more. See Rev Proc 2010-39, 2010-42 IRB 459, and Payroll Guide at ¶ 3807, for the high-low rates in effect from Oct. 1, 2010 to Sept. 30, 2011.

*Discontinuance of high-low substantiation method.* In September 2010, the IRS asked the public for comments on whether the Service should continue to offer the high-low substantiation method. The IRS received no feedback. As a result, the IRS no longer intends to offer the high-low substantiation method. The IRS will be publishing a business travel revenue procedure in the fall that will not include the high-low substantiation method. Subsequent revenue procedures will be published only when modifications are required. The IRS will publish the special transportation rate rule (see Payroll Guide at ¶ 3807) in an annual notice.

**🔍 observation:** Ann 2011-42, 2011-32 IRB, does not specifically mention when the high-low substantiation method may no longer be used. Presumably, it cannot be used after *Sept. 30, 2011*, when the IRS announces new actual per diem rates for the fiscal year beginning Oct. 1 2011.

## Client Letter Highlights August State Payroll Tax Changes

Dear Client/Employment Tax Specialist:

I'm writing to inform you about the following state payroll tax developments that will soon go into effect.

*California.* Beginning *Aug. 29, 2011*, Form 589, *Nonresident Reduced Withholding Request*, may no longer be submitted to the Franchise Tax Board (FTB) by fax [FTB Notice, *Processing Changes to California Withholding Forms and Payments*, 7/14/11].

*Connecticut.* New withholding tables and calculation rules went into effect on *August 1* that take into account recent legislation that retroactively raised personal income tax rates, effective Jan. 1, 2011. The new withholding tables include catch-up withholding amounts (see Payroll Guide at ¶ 23,802) [Connecticut Informational Publication 2011(10.1), 07/13/2011].

Employers have until *Aug. 31, 2011*, to pay a special assessment to help Connecticut pay the interest due on its outstanding federal unemployment insurance (UI) loans (see Payroll Guide at ¶ 11,805).

*Louisiana.* Certain employers are required to use the federal E-Verify system *beginning on Aug. 15, 2011* (see Article 16.11).

*Missouri.* Effective *Aug. 8, 2011*, current withholding laws on payments to nonresident entertainers (see Payroll Guide at ¶ 7705) do not apply to any person who makes a presentation for professional or technical education purposes, or to any presentation that is part of a seminar, conference, convention, school, or similar program meant to provide professional or technical education [L. 2011, S81].

*New Hampshire.* Effective *Aug. 6, 2011*, an employer can make deductions from wages for any purpose on which both the employer and employee agree if it does not give a financial advantage to the employer [L. 2011, H647].

*New Jersey.* New Jersey employers (except governmental entities and nonprofit organizations) must pay a "Federal Loan Interest Assessment" (FLINT) to help the State pay the interest due on its outstanding federal UI loans. Employers must pay the assessment by *Aug. 14, 2011*. See Payroll Guide at ¶ 14,205 for further information.

*New York.* All employers (except reimbursing employers) must pay an interest assessment surcharge (IAS) to help New York State pay the interest due on its federal UI loans. The payment is due on *Aug. 15, 2011*.

*North Dakota.* Certain taxpayers affected by recent flooding have until *August 31* to file returns and make payments that were originally due by July 31 (see Article 16.11).

*Wisconsin.* Employers whose taxable payrolls were greater than \$25,000 in the 2010 calendar year must pay a special assessment to the Wisconsin Department of Workforce Development (DWD) in September to help the State pay the interest due on its outstanding federal UI loans.

### **IRS Warns Employers about Bogus EFTPS E-mail Scam**

The IRS is advising employers to be aware of a bogus e-mail scam involving payments allegedly rejected by the Electronic Federal Tax Payment System (EFTPS). The e-mail contains a link that, if clicked on, may result in the download of malicious software. The software is often designed to provide the scammer with personal and financial information on the employer's computer that the scammer may use to commit identity theft.

The IRS does not initiate e-mail communication with taxpayers regarding EFTPS or tax account matters. All unsolicited e-mails that claim to be from either the IRS or any other IRS-related area, such as EFTPS, should be reported to: [IRS e-News for Payroll Providers, Issue No. 2011-8, 7/21/11].

### **IRS Updates Form 941 Specifications**

The IRS has updated the specifications for the private printing of paper and laser-printed substitutes for: (1) Form 941, *Employer's Quarterly Federal Tax Return*; (2) Form 941, Schedule B, *Report of Tax Liability for Semiweekly Schedule Depositors*; and (3) Form 941, Schedule R, *Allocation Schedule for Aggregate Form 941 Filers* [Rev Proc 2011-39, 2011-30 IRB 68].

*Schedule R.* This is the first time that Schedule R has been included in the revenue procedure. Schedule R may be used by "Form 2678 agents" to file an aggregate Form 941 return on behalf of multiple taxpayers. Section 5 has been added to the revenue procedure to provide guidelines for producing Schedule R. The IRS is cautioning substitute Schedule R filers to conform the schedule as closely as possible to the official IRS form. Filers should not produce the information on Schedule R in a spreadsheet or similar format. The IRS may not be able to properly process nonconforming documents with an excessive number of entries. Filers that have more than 15 clients should

complete as many continuation sheets for Schedule R (page 2) as necessary. If continuation sheets are not used, or they vary from the official form, processing may be delayed and employers may be subject to penalties.

*Software and form developers.* Forms that completely follow the guidelines in this publication and are exact replicas of the official IRS forms do not need to be submitted to the IRS for specific approval. However, software and form developers should send blank paper copies of their substitute Form 941, and Schedules B and R, in pdf format to ensure that the substitute form and schedules conform to IRS scanning specifications. The purpose of sending the form and schedules to the IRS is not specifically for approval, but to assist the IRS in preparing to scan the information.

Rev Proc 2008-32, 2008-28 IRB 82, is superseded.

### **IRS Revises TIN Matching Program Publication**

There is now a July 2011 version of IRS Publication 2108-A, *On-Line Taxpayer Identification Number (TIN) Matching Program*, on the IRS website.

The TIN matching program may be used by payors of Form 1099 income who are required to deduct backup withholding at a 28% tax rate on certain nonwage payments made to payees for whom an information return was filed which had either a missing or an incorrect TIN (see Code Sec. 3406(a)(1)(A), Code Sec. 3406(a)(1)(B), and Payroll Guide at ¶ 4040).

Prior to filing the information return, payors may check the TIN furnished by a payee against the name/TIN combination in an IRS database. The IRS will inform the payor whether or not the name/TIN combination furnished by the payee matches the name/TIN combination in the database. The matching details provided to participating payors, and their authorized agents, will help them avoid TIN errors and will reduce the number of backup withholding notices that they receive from the IRS.

Enrolled users may submit up to 25 name/TIN combinations at one time during an interactive session. They will receive a response to their request within five seconds. The revised version of the publication notes that only 999 separate interactive requests may be input by one User ID during a 24-hour period.

Program participants using Bulk TIN Matching may submit up to 100,000 name/TIN combinations for

matching. The IRS will respond to their request within 24 hours.

The publication includes online screen exhibits, troubleshooting tips, and frequently-asked questions.

Publication 2108-A was last revised in June 2008.

### **IRS Requires Manual Key Entry of ITINs on 2011 Form W-2**

The IRS is advising software developers, return transmitters, and authorized e-file providers/electronic return originators, that it will require the manual key entry of the taxpayer identification number (TIN) as it appears on the Form W-2 received from the employer for all taxpayers with individual taxpayer identification numbers (ITINs) who receive 2011 wages. No software package should utilize the auto-population feature, regardless of the presence of an override feature, to populate the TIN on Form W-2 for ITIN filers. Failure to comply with this requirement could result in a written reprimand, suspension, or expulsion from the e-file program. An ITIN is generally issued to a foreign person who does not have, and is not eligible to obtain, a Social Security number [IRS e-News for Tax Professionals, Issue No. 2011-27, 7/15/11].

### **Case Roundup**

Federal courts have recently issued rulings on an employment tax refund claim, and whether an employer violated federal law when it terminated a military veteran six months after his return to work following his tour of duty.

*Employment tax refund claim.* A federal district court has ruled that the IRS properly denied an employer's refund claim because the claim did not provide enough details on why the employer was entitled to a refund [*Majestic Communications Group, Inc. v. U.S.*, DC MS, 107 AFTR 2d 2011-2698, 6/22/11].

Majestic Communications Group, Inc. (Majestic) hired a law firm to prepare its tax returns and remit its tax payments. The law firm employed a bookkeeper who was responsible for Majestic's account. The bookkeeper experienced a number of personal problems, including the need to provide housing for her daughter who lost her home in Hurricane Katrina. The bookkeeper was subsequently terminated due to her failure to file Majestic's federal tax returns and remit payments. The IRS assessed interest and penalties on the delinquent returns, which the law firm paid.

Majestic filed 10 Forms 843, *Claim for Refund and Request for Abatement*, for the different tax periods at issue, requesting a refund of the interest and penalties. On each form, Majestic referenced the bookkeeper's personal instability, which led to her termination, but did not mention problems related to Hurricane Katrina. The IRS was offering tax relief for Hurricane Katrina victims. Majestic filed federal Form 7004 twelve days later to request a six-month extension to file its corporate tax return. On Form 7004, Majestic wrote "Hurricane Katrina" at the top of each page. Majestic then sued the IRS, seeking a refund of the penalties remitted on its behalf, alleging that the penalties and interest accruing from Majestic's late filing and payment of employment taxes should be abated in accordance with federally approved corporate filing extensions promulgated in response to Hurricane Katrina. The Form 7004 that was filed made no reference to the previously filed employment tax refund claims.

Reg § 301.6402-2(b)(1) requires a refund claim to provide sufficient details of the grounds on which the refund claim is based. The court cited Reg § 301.6402-2(b)(1) and denied the refund claim. The court noted that Form 7004 was a corporate income tax extension form and the Form 7004 that Majestic filed made no mention of the disputed employment taxes. Thus, neither the Forms 843 and supporting statements included in Majestic's administrative refund claims, nor the information provided in the Form 7004, provided "the tax and year with sufficient particularity to allow the IRS to undertake an investigation" of whether the IRS improperly denied Hurricane Katrina extensions to file employment taxes.

*Reinstatement of a military veteran to his previous job.* The U.S. Court of Appeals for the Second Circuit has ruled that an employer did not violate the Uniformed Services Employment and Reemployment Rights Act (USERRA) when it reinstated a U.S. army reserve member to his previous position after his tour of duty with the same salary and benefits, and then terminated the employee 180 days later [*Hart v. Family Dental Group, PC*, CA2, Dkt. No. 10-1008-cv, 5/31/11].

38 USCS 4316(c)(2) states that an employee may not be terminated in the first 180 days after reemployment if the term of active duty in a uniformed service before "reemployment was more than 30 days but less than 180 days."

Evan Hart was employed as a dentist by Family Dental Group, PC (FDG). Hart was enlisted in the U.S. Army Reserves prior to his employment with

FDG. Hart was called to active duty and, upon his return, began working for FDG in his previous position with the same salary and benefits. However, FDG notified Hart that his employment would be terminated in 60 days. After Hart questioned the legality, Hart was informed that his employment would be terminated in 30 days. Hart filed a complaint with the Department of Labor's Office of Veterans' Employment and Training (DOL), claiming that FDG had discriminated against him based on his military service. The DOL informed FDG that it was required under 38 USCS 4316(c)(2) to employ Hart for 180 days following his return from military service. FDG complied with the DOL directive and employed Hart for 180 days and then terminated him. After his employment was terminated, Hart filed suit claiming FDG had violated USERRA. The Second Circuit held that there was no violation of USERRA since the employer had complied with the requirements in 38 USCS 4316(c)(2).

### **Deferred Compensation Plan Did Not Violate Colorado or Louisiana Wage Payment Laws**

The U.S. Court of Appeals for the First Circuit has ruled that a brokerage firm's deferred compensation plan did not violate either Colorado's or Louisiana's wage payment laws [*In re Citigroup, Inc. Capital Accumulation Plan Litigation*, CA1, Dkt. No. 10-1124, 7/13/11].

**The facts.** Former employees of Salomon Smith Barney and its predecessors and affiliates (Smith Barney) participated in a deferred compensation plan known as the Capital Accumulation Plan (CAP). Under the terms of the CAP, the employees elected to receive portions of their earned commissions in the form of Citigroup stock, which was to be received at a 25% discount and on a tax-deferred basis. The stock was subject to a two-year vesting period during which the employees were restricted from transferring their shares, but were entitled to direct the shares' votes and receive regular dividends or dividend equivalents. If they resigned before the vesting period elapsed, they forfeited the restricted shares, as well as any compensation that was set aside to purchase those shares. The employees resigned before working two years for Smith Barney. They allege that they were entitled to receive the earned commissions at issue because the forfeiture provision above violated Colorado and Louisiana wage payment laws.

**Colorado.** Colo. Rev. Stat. § 8-4-101(8)(a)(I) states that "no amount is considered to be wages or com-

penensation until such amount is earned, vested, and determinable." The First Circuit said that the CAP did not violate Colo. Rev. Stat. § 8-4-101(8)(a)(I), because the employees had not "earned" either the full rights to the stock, or the amount of the commissions used to purchase the stock, since they had agreed to accept their compensation in CAP stock, and their rights to the CAP stock did not fully vest for two years.

**Louisiana.** La. Rev. Stat. Ann. § 23:631(A)(1)(a) requires employers to pay discharged employees "the amount then due under the terms of employment." The First Circuit said that based on the terms in the CAP documents, the stock was not "then due" at the time the Louisiana employees resigned. The court noted that Smith Barney did not "require" the employees to sign contracts that called for the forfeiture of their wages upon resignation, which would be in violation of La. Rev. Stat. Ann. § 23:634(A). Rather, the CAP was made available to the employees as a benefit of their employment, and they were free to reject that benefit.

**Prior ruling.** In 2008, the First Circuit Court of Appeals ruled that the above provision in the CAP plan did not violate either Florida's or Georgia's wage payment laws [*In re Citigroup, Inc.*, CA1, 535 F.3d 45, 7/24/08].

### **Webcast Discusses Payroll Tax Implications of Sending Workers to Switzerland**

PricewaterhouseCoopers (PwC) recently conducted a webcast called *International Assignee Tax Briefs - Switzerland*. The speakers on the webcast were Karin Verheijen, Partner, and Eliane Bloch, Senior Manager. Both speakers work for PwC in Switzerland and are specialists in expatriate taxation.

**Residency.** Classification of an individual as a Swiss tax resident or nonresident is significant, as residency determines how an individual is taxed. Swiss tax residents are taxed on their worldwide income, whereas nonresidents are taxed only on their Swiss-source income. Assignees working in Switzerland will generally be considered Swiss tax residents if they are in Switzerland for more than 30 days on a continuous basis to perform duties in Switzerland, or if they are in Switzerland for more than 90 days on a continuous basis without performing any duties in Switzerland. Family residence is also taken into consideration in determining residency. If an assignee's family does not relocate to Switzerland, the assignee may be classified as a nonresident for tax purposes.

**Taxation.** Switzerland is a confederation that includes 26 independent districts called “cantons” that are similar to states in the United States. Each canton has its own tax laws and tax rates. There are also federal taxes, so there are 27 different sets of tax laws. Furthermore, each canton is divided into communities, which may also have their own tax rules/rates. There are direct federal income taxes, cantonal income taxes, and community income taxes to take into consideration, as well as cantonal and community wealth taxes. There may also be a church tax, a fire brigade tax, a gift tax, and an inheritance tax.

Swiss tax residents are not only taxed on their worldwide income, but also on the worldwide income of their spouse and children. Worldwide income includes employment income, investment income, and rental income. The various types of income are added together to determine the tax rate that the individual will be subject to. Some income may be exempt from taxation by a tax treaty. Switzerland has an income tax treaty with the U.S. (see Payroll Guide at ¶ 21,585) and a totalization agreement (see Payroll Guide at ¶ 21,800).

Swiss tax residency begins on the day of arrival in Switzerland, and ends on the day of departure. If an assignee is married and has a Swiss tax liability, the assignee will have to file a joint tax return. Switzerland does not have a “married filing separately” filing status.

**Withholding.** Foreign nationals working in Switzerland are subject to a monthly withholding tax on their employment income. The tax is estimated based on marital status, family size, and canton of residence. Withholding is calculated using tables that take into account federal, cantonal, and community taxes. The withholding tax rate computation takes into account Swiss social security, pension, and standard deductions.

The withholding tax may be an assignee’s only tax obligation. Nonresidents (e.g., international commuters) do not have to file an annual tax return. An assignee will also not have to file an annual tax return if the assignee’s gross salary is less than 120,000 Swiss francs (CHF), which is approximately 146,000 U.S. dollars, and the assignee has no real estate income, minimal investment income (below 2,000 CHF), and no other income, such as self-employment or rental income. If the assignee’s income doesn’t fall within those parameters, final Swiss tax liability is determined when filing an annual return, which is due by March 31st of the following year (i.e., tax returns for 2011 are due by March 31, 2012). The taxes that have

been withheld will be credited towards the final tax liability on the return. While Switzerland has three different tax authorities (federal, cantonal, and local), only one annual return is filed. Deductions taken on the return include social security and pension contributions, as well as travel and professional costs.

The entire webcast may be found at <http://www.pwc.com/us/en/tax-services/webcasts/index.jhtml>.

## Stateline

New laws and developments are reported from the following states:

### CALIFORNIA

**Unclaimed Wages.** The State Controller’s Office (SCO) is reminding holders of abandoned property that Holder Notice Reports must be filed by *Oct. 31, 2011*. An unclaimed property report must be filed with the SCO if: (1) the last known address of the owner is in California (the Primary Rule of Jurisdiction); (2) there is no address for the owner in the holder’s records or the owner is unknown, and the holder is domiciled in California (Secondary Rule); or (3) the properties involved are traveler’s checks, money orders, and similar written instruments, and the transaction occurred in-state, i.e., the money order was purchased in-state (Transaction Rule) [SCO Holder Outreach Newsletter, 7/1/11].

**Wage Payment.** A U.S. district court has ruled that foreign employees on temporary assignment in the U.S. for a company based in India may pursue their claim that the company violated California labor law when it required the employees to sign over their federal and state tax refund checks. California Labor Code § 221 does not allow an employer to collect or receive any part of an employee’s wages. The court was not persuaded by the employer’s argument that tax refunds are not wages, since the employer controlled the number of federal and state exemptions that the employees claimed for withholding purposes and, therefore, affected the amount that they received for their labor. During the period the employees worked in the U.S., they continued to receive their pay and benefits in India as if they had continued to work for the employer in India. The court said that the employer was allowed to reduce this pay to take into account their U.S. compensation [*Vedachalam v. Tata America International Corp.*, ND CA, Dkt. No. 4:06-cv-00963-CW, 7/13/11].

**Withholding/Unemployment.** The Employment Development Department (EDD) is reminding employers and/or agents who are required to file Form DE 9, *Quarterly Contribution Return and Report of Wages*, and Form DE 9C, *Quarterly Contribution Return and Report*

of Wages (Continuation), that they must file both Form DE 9 and Form DE 9C each quarter [EDD Tax Branch News #140, 7/27/11].

## COLORADO

**Child Support.** Colorado will soon be revising its child support calculation. The dollar amount listed in the bi-weekly and weekly fields on the income withholding order (IWO) will be calculated by dividing the monthly amount due by 4 for weekly payroll; and by 2 for bi-weekly payroll. The dollar amount is currently calculated by multiplying the monthly amount due by 12 months and dividing by 52 for weekly payroll; and by 26 for bi-weekly payroll. For example, an employer with a weekly payroll that is required to withhold \$200 a month from an employee for child support will soon be required to withhold \$50 a week (i.e.,  $\$200 \div 4$ ) during four weeks of the month, rather than withholding \$46.15 each week (i.e.,  $(\$200 \times 12) \div 52$ ). A spokesperson for the Colorado Division of Child Support Enforcement (CSE) has told *RIA* that it currently plans to start using the revised calculation after it begins using the latest version of the Federal Office of Child Support Enforcement income withholding order. Employers may need to adjust their payroll system so that it will be able to make the revised calculation [CSE Notice, *Changes to the Income Withholding Notice*].

**Unemployment.** The Colorado Department of Labor and Employment (DLE) now uses the date mail is received from an employer to determine if it is on time. Second quarter unemployment tax reports and payments must have been received, not postmarked, by *July 31, 2011*. The DLE previously used the postmark date. If the due date falls on a weekend or State holiday, mail must be received by the first business day following the weekend or holiday to be considered timely [DLE UI Quarterly News, 2nd Quarter 2011].

**Withholding.** Colorado Revenue Online (CRO) allows taxpayers and tax professionals to access tax returns, payment history, refund status, and other information on the Colorado Department of Revenue (DOR) website. CRO will be available to withholding tax filers beginning on *Aug. 29, 2011*. Employers must register to use CRO [DOR TaxInfo Blog, *Save the Date—Manage Your Colorado Tax Account through Revenue Online*, 7/26/11].

Colorado will generally follow any federal April 15 deadline that is extended because of the observance of Emancipation Day in the District of Columbia, except with respect to wage withholding payments [1 CCR 201-2, 39-22-608].

## CONNECTICUT

**Withholding.** New withholding tables are now in effect that require catch-up withholding (see Payroll Guide at ¶ 23,802). Connecticut Department of Revenue Services (DRS) Commissioner Kevin B. Sullivan notes that the impact of the new withholding tables will be relatively minor for low- and medium-income earners. Single filers earning \$50,000 a year or less, and married filers who earn \$100,000 a year or less, will not see a change in their taxes. The weekly amount of additional catch-up withholding will only be around \$7 for a couple earning \$100,000 annually and filing jointly. Higher wage-earners will see a bigger increase in their withholding taxes. For a couple earning \$150,000 annually and filing jointly, the added tax withheld each week for the rest of the tax year will be around \$47. For a couple earning \$250,000 annually and filing jointly, the added tax withheld each week for the rest of the tax year will be around \$110 [DRS News Release, 7/29/11].

## DISTRICT OF COLUMBIA

**Withholding.** The District of Columbia Mayor has signed fiscal year 2012 budget legislation that has been sent to Congress for review. The legislation, *effective Jan. 1, 2012*, would allow employees who itemize deductions to claim additional withholding exemptions. The legislation would also require a payor to withhold District tax at the highest income tax rate in effect at the time that certain early distributions from a retirement account are made to resident payees if the payment is subject to mandatory federal withholding [L. 2011, B203, Act 19-98, effective after 30-day period of congressional review].

## GEORGIA

**Withholding.** The Georgia Department of Revenue has amended Reg. § 560-3-2-.26, *effective July 14, 2011*, to provide that, under the ACH debit method, all essential information related to the type of tax being paid and the related payment request is due on or before the statutory due date, rather than at 3 p.m., EST, on the business day prior to the statutory due date.

## IDAHO

**Withholding.** The 2011 W-2 Electronic Reporting Manual is on the Idaho State Tax Commission (STC) website. Employees must be given their W-2s no later than *Feb. 1, 2012*. The due date for filing either electronic or paper W-2s with the STC is *Feb. 29, 2012*. Employers with 50 or more Idaho employees who are required to file W-2s electronically with the IRS must also file electronically with Idaho. Employers filing W-2s electronically with the STC must make sure to include their Idaho withholding account number, Idaho wages, and Idaho withholding.

## LOUISIANA

**New Hire Reporting.** New legislation, *effective Aug. 15, 2011*, requires state and local contractors to use the federal E-Verify system to verify the employment eligibility of new hires. In addition, private employers must either use the federal E-Verify system, or ask new hires to provide a photo ID and one of the following documents: (1) U.S. birth certificate; (2) naturalization certificate; (3) certificate of citizenship; (4) alien registration receipt card; or (5) U.S. Immigration Form I-9 (with employment-authorized stamp). Employers failing to follow these rules will be subject to penalties [L. 2011, H342; L. 2011, H646].

## MASSACHUSETTS

**Withholding.** Massachusetts recently enacted legislation that, *effective retroactively to tax years beginning on or after Jan. 1, 2010*, conformed Massachusetts law to 2010 federal law that excludes medical care reimbursements and benefits for an employee's nondependent adult child under the age of 27 from gross income (see Payroll Guide at ¶ 3405). Employers that followed the federal health care benefits income exclusion rules for Massachusetts personal income tax purposes in 2010 and 2011 are not required to take any action as a result of the Massachusetts statutory change. If employers didn't follow the federal rules in the 2010 tax year, they are required to issue federal Form W-2c, *Corrected Wage and Tax Statement*, to any employee whose federal and state wages differed with respect to the treatment of medical care reimbursements and benefits. For the 2011 tax year, employers may adjust the withholding amount of affected employees to take into account the recent legislation. There shouldn't be a federal/Massachusetts difference in the amount reported as wages with respect to this item for the 2011 tax year [Massachusetts Technical Information Release 11-5, 07/01/2011].

## MINNESOTA

**Withholding.** Governor Mark Dayton signed a budget bill that ended the government shutdown. The Minnesota Department of Revenue (DOR) resumed operations on July 21. Representatives may send questions and e-mails about the shutdown to the DOR [DOR E-mail, 7/27/11].

New legislation, *effective for tax years beginning after Dec. 31, 2009*, updates Minnesota's conformity with the Internal Revenue Code (IRC) to the IRC in effect on April 14, 2011. As a result, *beginning with tax years after Dec. 31, 2010*, Minnesota now conforms to 2010 federal legislation that, effective March 30, 2010, excludes medical care reimbursements and benefits for an employee's nondependent adult child under the age of 27 from gross income (see Payroll Guide at ¶ 3405). Previously, Minnesota only conformed to the federal medical care legis-

lation with respect to the 2010 tax year [L. 2011, H20; Minnesota Withholding Tax Update, 7/26/11].

New legislation, *effective for any compensation paid or received after Dec. 31, 2011*, exempts nonresident entertainers from withholding if they receive compensation less than \$600 [L. 2011, H20].

## NEBRASKA

**Withholding.** The Nebraska Department of Revenue (DOR) has issued guidance on the requirement to pay by electronic funds transfer (EFT). *Effective July 1, 2011*, employers must pay by EFT if they made more than \$16,000 in employment tax payments in the previous year. The EFT threshold is scheduled to be reduced to \$13,000 in January 2012, \$11,000 in July 2012, \$9,000 in January 2013, \$8,000 in July 2013, \$7,000 in January 2014, \$6,000 in July 2014, and \$5,000 in January 2015 [DOR Release, *Electronic Funds Transfers of Tax Payments*, 7/1/11].

## NEW HAMPSHIRE

**Unemployment.** The New Hampshire Department of Employment Security has told *RIA* that unemployment tax rates for employers during the fiscal year beginning July 1, 2011 will remain unchanged. Tax rates for experienced employers will continue to range from 0.1% to 7.0%, and the new employer rate will remain at 2.7%. The above rates do not include the 1.0% emergency surcharge that is added to all employer tax rates, and the 1.5% inverse minimum rate surcharge that is added to the tax rates of negative-rated employers in addition to the emergency surcharge. The taxable wage base will increase from \$12,000 to \$14,000 in 2012.

New legislation, *effective Sept. 11, 2011*, gives employee leasing companies 20 business days (currently, 10 business days) to notify the Commissioner of Employment Security and the Department of Labor in writing about new and terminated clients [L. 2011, S89].

## NEW JERSEY

**Unemployment/Disability.** The taxable wage base for unemployment insurance (UI), temporary disability insurance (TDI), and family leave insurance will increase to \$30,300 in 2012 (currently, \$29,600). Maximum weekly unemployment benefits will increase from \$598 to \$611 in 2012, and maximum weekly TDI benefits will increase from \$559 to \$572. The alternative earnings test amount for UI and TDI benefits will remain at \$7,300 in 2012, and the base week amount for UI benefit eligibility will remain at \$145 [NJ Dep't of Labor & Workforce Development website].

## NEW YORK

**New Hire Reporting.** The New York State Department of Taxation and Finance (DTF) is reminding employers that recently-enacted federal law requires the

hire date of new or rehired employees to be included on new hire reports. Previously, this requirement was optional. The hire date is the date the employee first performed services for the employer for pay [E-mail from DTF, 7/22/11].

## NORTH CAROLINA

**Unemployment.** New legislation, *effective Nov. 1, 2011*, includes a provision that will move the independent Employment Security Commission to a division within the North Carolina Department of Commerce called the "Division of Employment Security." The legislation also includes a provision that gives employers 30 days (currently, 10) to protest unemployment benefit charges against their account [L. 2011, S532].

## NORTH DAKOTA

**Withholding.** North Dakota is offering individuals and businesses affected by the recent flooding along the Souris River in Ward, McHenry, and Renville counties (including the communities of Burlington, Minot, Minot AFB, Sawyer, Surrey, Towner, and Velva) extra time to file their withholding tax returns and make payments. Affected taxpayers have until *Aug. 31, 2011* to file returns and pay withholding taxes that would have been due by July 31, 2011. All business tax returns that were previously extended to August 15 are now extended to August 31. Penalties and interest will not be charged on any tax due on any eligible withholding return filed and paid by the extended due date [Tax Commissioner Press Release, *Tax Department Extends Filing Relief for Taxpayers Affected By Souris River Flooding*, 7/18/11].

## OREGON

**Garnishment.** Effective June 2, 2011, the amount exempt from garnishment is the greater of 75% of disposable weekly earnings or \$218 (previously, \$196) [L. 2011, H2682].

## PUERTO RICO

**Withholding.** Puerto Rico has revised its withholding computations for the 2011 tax year. The revised calculations are in the latest version of the Employer's Guide. Employers should now be using the revised computations to compute 2011 withholding. Under the new rules, every employee whose gross annual salary does not exceed \$20,000 will not be subject to withholding. However, these employees may still elect to have an amount withheld on their withholding exemption certificate (Form 499 R-4.1). Page 12 of the Guide provides a method for computing withholding on employees who receive wages plus commissions that fluctuate throughout the year. The Guide also includes percentage method with-

holding tables and tables for computing exemptions and allowances [Information Bulletin 11-11; Puerto Rico Department of the Treasury, 2011 Employer's Guide].

## RHODE ISLAND

**Wage Payment.** New legislation, effective immediately, authorizes the Department of Labor and Training to allow an employer to pay its employees less frequently than weekly, if the employer: (1) is in the financial services or investment advisory business; (2) employs more than 2,000 employees located in Rhode Island; (3) has an average payroll which exceeds 125% of the average compensation for all employees in Rhode Island; (4) makes regular payment of wages on a predesignated date no less than twice per month; and (5) provides proof of a surety bond or other sufficient demonstration of security in the amount of the highest biweekly payroll exposure in the preceding year for employees who will be paid less frequently than weekly [L. 2011, H5184].

## SOUTH DAKOTA

**Unemployment.** A spokesperson for the South Dakota Department of Labor and Regulation (DLR) has told *RIA* that employers will not have to pay an unemployment tax surcharge in the third quarter of 2011. The DLR does not expect the surcharge to be in effect in the fourth quarter of 2011 either. The surcharge has not been in effect since the third quarter of 2010.

## TENNESSEE

**Unemployment.** A spokesperson for the Tennessee Department of Labor and Workforce Development has told *RIA* that contribution rates for experienced non-governmental employers will continue to be determined under Premium Table 1 in the third and fourth quarters of 2011. Rates range from 0.5% to 10.0%. The 0.6% temporary additional premium fee will also remain in effect.

## WISCONSIN

**Withholding.** Tax professionals who use *My Tax Account* (the Department of Revenue's free online business tax system) to manage their clients' accounts should register and sign in to *My Tax Account* using their *own* logon ID and password, rather than their clients' logon IDs and passwords. Tax professionals will still be able to request third-party access to their clients' accounts if they use their own ID and password and will not be affected by changes to client IDs and passwords [Wisconsin News for Tax Practitioners 07/27/2011 (Help Keep Your Client's My Tax Account Secure), 07/27/2011].

© 2011 Thomson Reuters/RIA. All rights reserved. Copyright is not claimed in any material secured from official U.S. Government sources.



THOMSON REUTERS

© 2011 Thomson Reuters/RIA