
Payroll Guide

□ Highlights □

Client Letter Highlights September State Payroll Tax Changes Some states are imposing special unemployment tax assessments. One state is conducting a tax amnesty program. Another state will require more employers to remit child support payments electronically.

Final Regulations Detail Methods Used to Prove that Documents Were Delivered by the Tax Filing Deadline The acceptable methods are: (1) direct proof of the actual delivery of the documents, (2) proper use of registered or certified mail, and (3) proper use of an IRS-authorized private delivery service.

Senator to Introduce Legislation to Waive Interest Due on Federal Unemployment Loans Without legislation, states that currently have unpaid federal loans will have to pay the interest by Sept. 30, 2011.

Worker Classification Issues Prevalent in Business Consulting Industry The IRS has issued a guide to help its examiners identify worker classification issues in the business consulting industry.

Employer Information Report Due on September 30th Certain employers have until September 30th to provide the Equal Employment Opportunity Commission with a count of their employees by job category, ethnicity, race, and gender.

E-Verify Self Check Service Now Available in 21 States and in Spanish E-Verify Self Check allows workers to check their own eligibility to work in the United States.

When Are Retirement Plan Distributions Subject to Withholding? The IRS has provided some guidance on this topic.

Lawsuit Alleges that Employer Ran Pyramiding Scheme The employer allegedly used the taxes withheld from employees' wages as working capital, rather than remitting the taxes to the IRS.

Employer May Deduct Credit Card Balances from Employees' Final Pay The court allowed the employer to take accrued leave pay into account in computing minimum wage and overtime on the final paycheck that included the credit card deduction.

Case Roundup Federal courts have recently issued rulings on computing overtime, attorney fees, and the Indian tribe federal unemployment tax exemption.

IRS Issues Guidance on the Tax Consequences of Cash Distributions Made by Public Employers The distributions are generally included in wages for withholding and FICA tax purposes.

Federal Interest Rates to Decrease in the Fourth Quarter The rates will be 1% lower in the fourth quarter.

Webcast Discusses Payroll Tax Implications of Sending Workers to Singapore Employers are generally not required to deduct withholding on payments received by employees working in Singapore.

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

Client Letter Highlights September State Payroll Tax Changes

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

Alabama. Alabama employers must pay a 0.07% unemployment tax assessment on their 2010 taxable wages to help the State repay the interest on its federal unemployment loans. The assessment is due on *Sept. 9, 2011* and totals approximately \$5.60 for each employee [Alabama Dept. of Industrial Relations News Release, *Alabama Employers to Receive Tax Assessment to Avoid Loss of FUTA Credit*, 8/8/11].

Arizona. The Arizona Department of Revenue (DOR) is conducting a tax recovery program from *Sept. 1, 2011 through Oct. 1, 2011*. Taxpayers who participate in the program will have an opportunity to pay back delinquent Arizona taxes without penalty or criminal prosecution, and at a reduced interest rate. Monthly and quarterly withholding tax periods between Jan. 1, 2005 and Dec. 31, 2009 are included in the program [Arizona Tax Recovery Program, 8/1/11].

Maine. All payroll processing companies must apply to the Maine Bureau of Consumer Credit Protection for a license and pay a fee. *Beginning Sept. 28, 2011*, there are three different kinds of licenses: full-service payroll licenses, limited payroll processor licenses, and restricted payroll processor licenses. Only processors with full-service payroll licenses are permitted to collect, hold, or turn over any withholding taxes or unemployment insurance contributions to the appropriate agencies [L. 2011, H1007].

New Hampshire. *Effective Sept. 11, 2011*, employee leasing companies must notify the Commissioner of Employment Security and Department of Labor in writing within 20 business days about new and terminated clients (previously, 10 business days) [L. 2011, S89].

Texas. *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 [L. 2011, H2579].

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 to the Child Support Division in the Texas Office of the Attorney General [L. 2011, H1674].

Wisconsin. Employers whose taxable payrolls were greater than \$25,000 in the 2010 calendar year are subject to a special assessment to help the State pay the interest due on its federal unemployment insurance loans. The assessment will be computed on 0.2249% of an employer's taxable payroll (maximum of \$27 per employee). Reimbursing employers will pay the assessment on 0.1687% of their taxable payroll (maximum of \$20 per employee). The assessment must be paid by *Sept. 30, 2011* [DWD website, *Special Message to Employers: Information on Special Assessment for Interest*].

Final Regulations Detail Methods Used to Prove that Documents Were Delivered by the Tax Filing Deadline

The IRS has issued final regulations on the filing methods that may be used to establish that documents were delivered by the tax filing deadline [TD 9543, 08/19/2011; Reg § 301.7502-1, 08/19/2011].

Background. Code Sec. 7502(a)(1) provides that when a federal tax return is required to be filed by a particular date and is received by the IRS after that date, the postmark on the envelope in which the return was mailed is considered to be the date of filing. If a return is sent by registered or certified mail, a taxpayer must provide proof that the document was properly registered or certified, and that the envelope was properly addressed, to establish prima facie evidence of delivery (see Code Sec. 7502(c)).

Under the "mailbox rule" in common law, if mail is properly addressed and deposited in the U.S. mails with proper postage prepaid on it, there is a rebuttable presumption of fact that it was received by the addressee in the ordinary course of the mail.

Private delivery service. Code Sec. 7502(f)(3) allows the IRS to issue a rule similar to Code Sec. 7502(a)(1) with respect to a private delivery service (PDS) if the PDS is "substantially equivalent" to registered or certified mail. The IRS currently accepts tax returns and payments from the following private delivery services: DHL, Federal Express, and United Parcel Service (UPS).

Final regulations. The final regulations provide that direct proof of actual delivery, proof of proper use of registered or certified mail (registered or certified mail sender's receipt), and proof of proper use of a PDS duly designated under criteria established by the IRS are the sole means to establish prima facie evidence of delivery of documents that have a filing deadline prescribed by the Internal Revenue laws. The Trea-

sury Department and the IRS will issue guidance that will establish the criteria to be used to designate PDSs for purposes of the prima facie evidence of delivery rule in Code Sec. 7502(c).

The final regulations apply to taxpayers who mail federal tax documents to the IRS or the U.S. Tax Court.

Senator to Introduce Legislation to Waive Interest Due on Federal Unemployment Loans

Senator Charles Schumer (D-NY) has announced that he will be introducing new legislation in Congress to waive the interest payments that many states must pay on federal unemployment insurance (UI) loans. A provision in the American Recovery and Reinvestment Act (ARRA) permitted states to take interest-free loans from the federal unemployment trust fund through 2010. Congress failed to include an extension of the interest-free loan provision in the debt ceiling compromise negotiated several weeks ago. Currently, 27 states and the U.S. Virgin Islands have outstanding federal unemployment loans. They must pay interest on these loans by Sept. 30, 2011, unless the loans are repaid or the interest-free provision is extended.

Many states are passing the interest charges on to employers. For example, New York State has borrowed approximately \$3 billion from the federal government and will be required to pay \$95 million in interest on this loan by the end of September. It recently imposed an interest assessment surcharge (IAS) on most employers to help it pay the interest on the federal loan. The surcharge can be as high as \$21.25 per employee. If Schumer's legislation were enacted, the surcharge would be refunded to employers. Other states that have already imposed surcharges would also be required to refund the assessment to employers.

"At a time when we need to be doing everything we can to help our businesses . . . create and retain jobs, this tax is an anchor that will only drag us down," said Schumer. "We need to free small business owners from the shackles of this fee and instead help them invest in their business to create new jobs. This is a whopping \$95 million that should go to hiring more workers and reinvesting in businesses to help them grow. That's one way to get our economy back on track" [Senator Schumer Press Release, 8/16/11].

Worker Classification Issues Prevalent in Business Consulting Industry

There is now a July 2011 version of the IRS Business Consultants Audit Techniques Guide (ATG). The ATG is a tool used by IRS examiners to assist in identifying frequent and unique issues associated with the business consulting industry. The ATG is set up to provide information to the examiner on each potential issue that may arise in an audit within the business consulting industry. Each issue includes an introduction to the issue, preaudit suggestions, audit techniques to assist in the issue, and a law section describing the legal background for each issue.

The IRS notes that business consulting is one of the fastest growing industries in the world today. This trend is a result of many changes occurring in the world economy. During the past two decades, the business community has been downsizing, which has caused the displacement of many workers. These displaced workers have created a growing industry now known as "consulting." Some of these former employees are now contractors who are engaged by the same company and/or industry which previously employed them. Companies are hiring employees back as contractors in an effort to save money on payroll expenses and employee benefits.

The ATG offers specific guidelines on the issue of independent contractors vs. employees. "Red flags" are raised when a former employee comes back to a company as an independent consultant with only a brief break in service. The IRS is also concerned about consultants who obtain a client for which they do not have all the resources to fulfill the contract. To meet the client's needs, consultants may form business relationships (strategic alliances) with other individuals. This can lead to an employee/employer relationship.

Employer Information Report Due on September 30th

The deadline for filing the Employer Information Report (also known as the EEO-1 Report) with the Equal Employment Opportunity Commission (EEOC) is September 30th. The report must be filed by: (1) employers with federal government contracts of \$50,000 or more who have 50 or more employees; and (2) employers who do not have a federal government contract but have 100 or more employees. The report requires employers to provide a count of their employees by job category, ethnicity, race, and gen-

der. Employment numbers may be obtained from any pay period in July through September of 2011.

The EEOC prefers the report to be filed using the EEO-1 Web-based filing system. The system requires a login ID and password. Other filing options for private employers include submitting the report as a data file or filing the report as a computer printout. The EEOC will only allow the report to be filed on paper if so requested by an employer with no Internet access.

The EEOC website contains a list of frequently asked questions on the report. Further information on the reporting process can also be obtained by calling the EEO-1 Joint Reporting Committee at: (866) 286-6440.

E-Verify Self Check Service Now Available in 21 States and in Spanish

The U.S. Citizenship and Immigration Services (USCIS) has announced that the E-Verify Self Check service is now available in Spanish. USCIS has also expanded the Self Check service to users who maintain an address and are physically located in California, Louisiana, Maine, Maryland, Massachusetts, Minnesota, Missouri, Nebraska, Nevada, New Jersey, New York, Ohio, South Carolina, Texas, Utah, and Washington. Self Check was already available to users in Arizona, Colorado, the District of Columbia, Idaho, Mississippi, and Virginia [USCIS News Release, *USCIS Launches Spanish-Language Version of E-Verify Self Check*, 8/15/11].

E-Verify is a free, Internet-based system that determines the employment eligibility of new hires by comparing information from the new hire's Form I-9, *Employment Eligibility Verification*, to Department of Homeland Security (DHS) and Social Security Administration (SSA) records. E-Verify Self Check was developed in response to a request by Congress to create a service through which workers could check their own employment eligibility. When workers over the age of 16 use Self Check to confirm their eligibility to work in the United States, they enter the same information that employers would enter into E-Verify. Self Check allows users to compare their information to the same databases that E-Verify accesses, giving them an opportunity to address any existing data mismatches before they are hired by an E-Verify participating employer.

USCIS will continue to evaluate and improve the Self Check service, which it intends to expand nationwide by the spring of 2012.

When Are Retirement Plan Distributions Subject to Withholding?

Distributions from an employer-sponsored retirement plan may or may not be subject to withholding, depending on the nature of the payment. In some cases, withholding is mandatory, and in others the recipient can elect out. The IRS has provided guidance on these rules in the Summer 2011 edition of *Retirement News for Employers*.

Withholding on eligible rollover distributions. In general, the payor of any designated distribution that is an eligible rollover distribution must withhold an amount equal to 20% of the distribution. A designated distribution is a distribution or payment from, or under: (1) an employer deferred compensation plan; (2) an individual retirement account (IRA) or individual retirement annuity; or (3) a commercial annuity. An eligible rollover distribution generally is a plan distribution from an eligible retirement plan (i.e., plan distributions other than periodic distributions, minimum required distributions, or hardship distributions). The recipient of a distribution subject to 20% withholding may not elect out of the withholding requirement [Code Sec. 3405; Reg § 31.3405(c)-1].

The IRS points out that eligible rollover distributions are not subject to withholding if the expected distributions to an individual are less than \$200 for the year. Also, the 20% withholding generally only applies to any previously untaxed amount of an eligible rollover distribution. The most important exception by far is that no withholding is required if the plan directly rolls over (in a trustee-to-trustee transfer) the eligible rollover distribution amount to another qualified retirement plan or IRA.

Periodic payments. Periodic payments are made at regular intervals for more than one year (for example, an annuity). The payor of a periodic payment that isn't an eligible rollover distribution must withhold from the payment as if it were a wage payment. The plan administrator must generally withhold at the rate for a married individual with three withholding exemptions. However, recipients have the right (and must be so informed by the plan administrator) to: (1) elect no withholding, or elect to have a different amount withheld, by filing a Form W-4P, *Withholding Certificate for Pension or Annuity Payments*, with the plan administrator; and (2) revoke the election at any time [Code Sec. 3405(a)(1)].

Nonperiodic payments. A nonperiodic payment is a distribution that usually isn't made at regular intervals and isn't an eligible rollover distribution (e.g., distributions of excess contributions and excess aggregate

contributions from most plans if made within 2 ½ months after the end of the plan year, hardship distributions, and loans treated as distributions). Nonperiodic payments generally are subject to 10% withholding. However, the recipient may elect no withholding or have a different amount withheld by filing a Form W-4P with the plan administrator.

Special situations. Plan administrators need to be aware that special rules apply to: distributions made because of recognized disasters; distributions delivered outside the U.S. or U.S. possessions; certain noncash distributions, including employer securities; and a participant's accrued benefit offset because of a defaulted loan [Reg § 31.3405(c)-1].

Withholding is not required on distributions from designated Roth accounts in §§ 401(k), 403(b), or 457(b) plans because the distribution is not taxable. If a nonqualified distribution is made from such an account, withholding is required only from any distributed earnings that the recipient must include in gross income.

See Payroll Guide at ¶ 4015 and Payroll Guide at ¶ 4038 for further information on this topic.

Lawsuit Alleges that Employer Ran Pyramiding Scheme

The Department of Justice (DOJ) has filed a lawsuit against Advanced Underground Construction, LLC (AUC), an Iowa-based company, and its principal, William David Ward II, due to the company's repeated failure to remit the federal employment taxes that it withheld from employees' wages to the IRS. The DOJ says that the company owes the IRS more than \$370,000. The company allegedly used the taxes withheld from employees' wages as working capital, rather than remitting the taxes to the IRS. This practice is sometimes referred to as "pyramiding." The DOJ notes that the company has made minimal payments of its tax debts, and that government attempts to induce voluntary compliance have failed.

The DOJ is seeking an injunction to require AUC and Ward to timely deposit and pay withheld employment taxes, and to timely file all employment tax returns [DOJ News Release, *Justice Department Seeks to Require Iowa Construction Company to Pay Employment Taxes It Withholds from Employees' Wages*, 8/16/11].

Employer May Deduct Credit Card Balances from Employees' Final Pay

A federal district court has ruled that an employer did not violate federal and California wage and hour laws when it deducted the amount that terminated employees owed on the company's credit card from their final paychecks [*Ward v. Costco Wholesale Corp.*, DC CA, Dkt. No. 2:08-cv-02013-JHN-SSx, 8/11].

The facts. Costco Wholesale Corporation (Costco) had a guaranteed credit card program that allowed employees to make Costco purchases using a credit card issued by Household Retail Services. Costco guaranteed the credit card in the event of an employee's default. The employees had signed authorization agreements that allowed the company to deduct an amount from the employee's final paycheck equal to the employee's credit card balance after the employee terminated employment with Costco. For all of the 19 former Costco employees who participated in this lawsuit, the credit card deduction was taken from a check that also included accrued leave pay.

The law. Federal and California wage and hour law require employees to be paid at least the minimum wage rate, and to be paid time-and-a-half for hours worked over 40 in a week.

The employees contended that Costco violated the federal Fair Labor Standards Act (FLSA) and California wage and hour law by taking the accrued leave pay into account in computing minimum wage and overtime on the final paycheck that included the credit card deduction. They believe that in determining whether they received the applicable minimum and overtime wages, only gross wages for hours worked should be considered.

The ruling. In ruling in favor of the employer, the court said that to disregard accrued leave pay on the final paycheck would be inconsistent with the evidence. For eight of the 19 employees, the credit card deduction was taken from a paycheck that did not include any wages for hours worked. For three of these employees, the check from which the deduction was taken was issued at least two months after the last check with a payment for hours worked. Most tellingly, one employee was issued his last paycheck for hours worked in October 2006, and the credit-card deduction was taken from a check issued more than a year later, in February 2008, which included only pay for vacation and sick leave. Under these circumstances, the court believed that there was no reasonable basis to consider only pay for hours worked in the minimum wage and overtime computations.

In addition, all of the 19 terminated employees had been paid enough for work and non-work pay to cover the amount of that individual's credit card deductions without resulting in a minimum wage or overtime violation. The court also noted that, for each of the 19 employees, the credit card deduction was less than the amount of their leave pay.

The court did not address whether Costco's wage deduction policy might violate the minimum wage and overtime provisions in federal and California wage and hour law under other circumstances that were different from the ones in this ruling.

Case Roundup

There have been recent federal court rulings on: (1) how overtime should be calculated for an employee receiving a fixed salary who was misclassified as an independent contractor; (2) whether an employer must pay attorney fees to an employee in an overtime lawsuit that was dismissed; and (3) whether an employee leasing company that was owned by an Indian tribe was entitled to a refund of federal unemployment taxes that it paid under the Indian tribe exemption in federal unemployment tax law.

Overtime computation. A federal district court has ruled that overtime can be computed for an employee receiving a fixed salary who was misclassified as an independent contractor using the fluctuating workweek method. Under this method (see 29 CFR § 778.114), overtime pay is calculated based on one-half of the employee's regular rate of pay, rather than time-and-a-half. The method may be used if "there is a clear mutual understanding of the parties that the fixed salary is compensation (apart from overtime premiums) for the hours worked each workweek, whatever their number, rather than for working 40 hours or some other fixed weekly work period." In this instance, the court determined that there was a clear mutual understanding between the employer and the employee that the employee was to receive a fixed monthly salary of \$2,000 plus commissions, regardless of how many hours she worked each workweek [*Crumpton v. Sunset Club Properties, LLC*, DC FL, Dkt. No. 2:09-cv-680-FtM-29DNF, 8/1/11].

Attorney fees. The U.S. Court of Appeals for the Eleventh Circuit has ruled that an employer who denied liability for overtime doesn't have to pay attorney fees and costs to the employee under 29 USCS 216(b) if the employer paid the overtime to the employee anyway so that the lawsuit would be dismissed. The Eleventh Circuit agreed with a lower court's determination that the employee was not enti-

led to be reimbursed for attorney fees and other costs because there had been no judicial determination (nor any request by the employee for judicial determination) that the employer had violated the Fair Labor Standard Act's (FLSA) overtime provisions. The lower court said that it had been clear from the inception of the litigation that the employer had denied any and all liability, and merely tendered payment in order to resolve this case and render the employee's claim moot [*Dionne v. Floormasters Enterprises, Inc.*, CA 11, Dkt. No. 09-15405, 7/28/11].

Indian tribe federal unemployment tax exemption. Code Sec. 3306(c)(7) exempts "services performed in the employ of an Indian tribe, or any instrumentality" of a tribe from federal unemployment tax (FUTA). Blue Lake Rancheria (Blue Lake), an Indian tribe, sought a refund of FUTA taxes paid by Mainstay Business Solutions (Mainstay), an employee leasing company wholly owned by Blue Lake. Mainstay contracted with each of its clients to hire the client's employees as its own, and then "leased" those employees back to the client. The client supervised the leased employees on a day-to-day basis, but Mainstay paid their wages, provided benefits, and performed other human resources functions.

The U.S. Court of Appeals for the Ninth Circuit has now ruled that Mainstay is entitled to the refund, based on its determination that Mainstay was the "common law" employer of the employees. A "common law" employer is any person who has the status of employer under the usual common law rules applicable in determining the employer-employee relationship. The Ninth Circuit said that Mainstay was the common law employer because the employees were required to comply with Mainstay's employment policies regarding such issues as smoking, telephone use, timekeeping, and breaks. In addition, Mainstay set the level of compensation and had ultimate responsibility for paying the employees. If a client failed to pay Mainstay's invoice, Mainstay paid the employees' wages from its own bank account. Mainstay treated the leased employees as its own for tax purposes, issuing W-2 forms, withholding and remitting income taxes, and paying the employer portion of FICA taxes. Mainstay provided employment benefits, including health insurance, life insurance, and a § 401(k) retirement plan.

The Ninth Circuit would not have granted the refund if Mainstay was only a "statutory employer" of the employees. A "statutory employer" is merely a paymaster, i.e., the person having control over the payment of wages (see Code Sec. 3401(d)(1)) [*Blue Lake*

Rancheria v. United States, CA9, 108 AFTR 2d ¶12011-5180, 8/11/11].

IRS Issues Guidance on the Tax Consequences of Cash Distributions Made by Public Employers

The IRS has issued a private letter ruling on the federal employment tax consequences of a proposed cash distribution by a public institution to its covered employees (or their survivors) [IRS Letter Ruling 201132018].

Gross income. Gross income under Code Sec. 61(a)(1) is defined as all income from whatever source derived, including compensation for services. The IRS said that the public institution is making the distribution to the covered employees (or their survivors) for services the covered employees rendered to the public institution. Therefore, the cash distribution that each covered employee or survivor receives is compensation income to that recipient under Code Sec. 61(a)(1).

FICA tax. The IRS said that since the cash distribution was compensation to the covered employees for services rendered in an employer-employee relationship, the payments are subject to FICA taxes under Code Sec. 3121, unless a specific exception applies. For example, Code Sec. 3121(a)(14) provides a FICA tax exception for payments made by an employer to a survivor or the estate of a former employee after the calendar year in which the employee died.

To the extent the public institution makes a cash distribution to a survivor in the same calendar year as the death of the employee, the cash distribution is generally subject to FICA taxes and should be reported in box 3 (Social Security wages) and box 5 (Medicare wages and tips) on a Form W-2 that is issued in the name of the employee with the employee's Social Security number. The public institution must report Social Security and Medicare taxes withheld in boxes 4 and 6 of Form W-2, respectively. If the cash distribution is made after the calendar year of the employee's death, the distribution is not subject to FICA taxes and the payment should not be reported as Social Security wages or Medicare wages on Form W-2. The public institution must also report the payment to the survivor on Form 1099-MISC, box 3 (Other income). The payment must be reported on Form 1099-MISC regardless of how long after death the cash distribution was made to the survivor.

Federal withholding tax. The cash distribution is also wages for withholding tax purposes. The distribu-

tion must be reported in box 1 of Form W-2. The withholding must be reported in box 2 of Form W-2. If the public institution pays a cash distribution to a survivor that was earned but unpaid prior to the covered employee's death, in either the year of death or after the year of death, the distribution will not be reported in box 1 of Form W-2 and will not result in any federal income tax withholding to be reported in box 2 of Form W-2 (see Rev Rul 86-109, 1986-2 CB 196, for further information).

Federal Interest Rates to Decrease in the Fourth Quarter

The IRS has announced that interest rates will decrease by 1% in the fourth quarter (Oct. 1 to Dec. 31, 2011). The overpayment rate will decrease from 4% to 3% (from 3% to 2% in the case of a corporation). The underpayment rate will decrease from 4% to 3%. The large corporate underpayment interest rate will decrease from 6% to 5%. The interest rate for the portion of a corporate overpayment exceeding \$10,000 will decrease from 1.5% to 0.5% [Rev Rul 2011-18, 2011-39 IRB; IR 2011-85, 08/18/2011].

Webcast Discusses Payroll Tax Implications of Sending Workers to Singapore

PricewaterhouseCoopers (PwC) recently conducted a webcast called *International Assignee Tax Briefs - Singapore*. The speakers on the webcast were Girish Naik, Director, and Matthew Loombe, Senior Manager, for PwC International Assignment Services in Singapore.

Taxation. Employment income will be subject to taxation in Singapore if the services are performed in Singapore. It doesn't matter where the employment contract was signed or where the salary was paid from. Singapore has an incidental taxation rule under which services performed outside of the country will be subject to Singapore taxation if the majority of the services are performed in Singapore. Employment income earned by nonresidents is not subject to social security tax.

Residency. A nonresident is an individual who is employed in Singapore for 60 days or less in a calendar year. Employment income earned by nonresidents is exempt from taxation (known as the "short stay exemption"). This rule does not apply to directors, public entertainers, and to certain professionals, such as foreign experts, foreign speakers, consultants, trainers, etc.

Individuals who are physically present in Singapore for between 61-182 days in a calendar year are also classified as nonresidents. However, their employment income is subject to taxation, beginning on the 61st day, at either a flat 15% rate, or at progressive resident tax rates, whichever is higher. Some of the employment income may be exempt under a tax treaty. Singapore does not have a tax treaty with the United States.

Individuals will be classified as Singapore tax residents if they are physically present or working in Singapore for more than 182 days in the calendar year. An individual who works in Singapore from Sept. 9, 2011 to April 15, 2012 will be classified as a Singapore resident in both 2011 and 2012. Residents are taxed at graduated income tax rates that can be as high as 20%.

Fringe benefits. Accommodation benefits (e.g., hotel, apartment, furniture and fittings) are taxed at lower tax rates. If an employer pays a nonresident employee's airfare to visit home, only 20% of the airfare cost will be taxable to the employee. This fringe benefit is limited to one trip home per year by the nonresident employee or spouse. There is a special formula to compute the tax benefit that assignees to Singapore must include in income if they receive a leased or company car.

Assignees will not be subject to tax on the following relocation expenses provided by their employer: cost of airfare to bring the assignee, family members, and pets to Singapore; freight/storage charges to move personal effects; cost of temporary accommodation (i.e., hotel or serviced apartment) incurred before the start of employment; and settling-in expenses (e.g., first purchase of bedding, kitchen appliances, and subscription to broadband Internet access).

Assignees are not subject to tax on the cost of group medical insurance provided by their employer, even if the employee is named as the beneficiary of the policy.

Tax compliance. Employers are generally not required to deduct withholding on payments received by employees working in Singapore. Employers are only required to make a tax payment if they receive a Notice of Assessment (tax bill) from the Inland Revenue Authority of Singapore (IRAS). The IRAS will generally issue a Notice of Assessment after employees file their personal income tax returns. An employer must file a Form IR8A (similar to Form W-2) by March 1 for all of its employees who worked in Singapore in the previous year. Appendix 8A must be completed if benefits-in-kind are provided to employees.

Appendix 8B must be completed if employees derived gains or profits from employee stock option (ESOP) plans or employee share ownership (ESOW) plans.

An employer must file Form IR21, *Notification of a Non-citizen Employee's Cessation of Employment or Departure from Singapore*, at least 30 days before a foreign employee (including a Singapore permanent resident) no longer works for the employer in Singapore, or the employee leaves Singapore for more than three months (with certain exceptions).

The speakers noted that the IRAS is increasing the number of audits that it conducts on employers.

The entire webcast will be archived to: <http://www.pwc.com/us/en/tax-services/webcasts/index.jhtml>.

Stateline

New laws and developments are reported from the following states:

ARIZONA

Withholding. The Arizona Department of Revenue (ADOR) has issued a new ruling on the taxability of benefits provided under a Code Sec. 125 cafeteria plan. The starting point for the Arizona income tax computation for a resident individual is federal adjusted gross income (AGI). There is no specific rule for cafeteria plan benefits in Arizona's income tax statutes. Therefore, to the extent that such amounts are excluded from or included in federal AGI, they will likewise be excluded from or included in Arizona gross income. Arizona follows the federal withholding rules with respect to benefits from cafeteria plans. The new ruling supersedes Arizona Individual Income Tax Ruling 94-11, 4/11/95 [Arizona Individual Income Tax Ruling 11-7, 08/17/2011].

There is now a July 2011 version of Arizona DOR Publication 622, 07/01/2011, *Business Basics: A Guide to Taxes for Arizona Businesses*. The publication is designed to help Arizona businesses comply with Arizona's basic tax and licensing requirements. It includes information on income tax withholding, including details on the revised withholding computation rules that went into effect on July 1, 2010 (see Payroll Guide at ¶ 23,401). The publication also provides contact information for the Department of Revenue and other State agencies.

CALIFORNIA

Wage and Hour. The California Court of Appeal has ruled that a law firm correctly classified a law clerk as employed in a professional capacity. As a result, the firm did not have to pay him overtime or provide certain other benefits. The court said that even though the clerk had

not yet been licensed to practice law in California, he was a law school graduate and performed duties that exempted him from overtime under California Wage Order 4-2001, 10/01/06. The exemption in this wage order applies to an employee who is either: (a) licensed or certified by the State of California and is primarily engaged in the practice of certain professions, including law, or (b) primarily engaged in an occupation commonly recognized as a learned or artistic profession (known as the "learned professions" exemption). The court said that the law clerk performed duties that exempted him from overtime under the learned professions exemption. The law clerk only had to satisfy the requirements in either (a) or (b) above to be exempt from overtime [*Zelasko-Barrett v. Brayton-Purcell, LLP.*, Cal. Ct. App., 1st Dist., Dkt. No. A130540, 8/17/11].

CONNECTICUT

Withholding. The Connecticut Department of Revenue Services (DRS) has posted an August 2011 version of Form CT-W4, *Employee's Withholding Certificate*, on its website. The form was last revised in December 2010. The form is retroactively effective to Jan. 1, 2011. The withholding code for a qualifying widow(er) who has a dependent child and who expects to have an annual gross income greater than \$24,000 has changed. In addition, some of the amounts on the table that shows withholding adjustments for married couples who both select withholding code "A" on Form CT-W4, and who have a combined income that is \$100,500 or less, have changed. The withholding tables and withholding calculation rules were revised, effective Aug. 1, 2011, to take into account recent legislation that retroactively raised personal income tax rates, effective Jan. 1, 2011 (see Payroll Guide at ¶ 23,802).

The DRS has issued Connecticut Informational Publication 2011(16), 08/18/2011, *Successor Liability for Sales and Use Taxes, Admissions and Dues Tax and Connecticut Income Tax Withholding*, and Connecticut Policy Statement 2011(2), 08/18/2011, *Income Tax Withholding for Athletes or Entertainers*. IP 2011(16) includes information on successor liability and explains how the purchaser of a business or stock of goods requests a tax clearance certificate for Connecticut income tax withholding. PS 2011(2) details the income tax withholding requirements on payments made to performers or performing entities on income derived from Connecticut sources. The publication includes examples to illustrate how these requirements apply to designated withholding agents, performers, and performing entities.

IDAHO

Withholding. The Idaho State Tax Commission has made additional changes to the 2011 W-2 Electronic Reporting Manual. The step-by-step instructions for cre-

ating an RV record on page 10 of the manual have been revised to include information for split monthly filers (filing cycle B) only [2011 Idaho W-2 Electronic Reporting Manual, 8/18/11].

KENTUCKY

Withholding. The West Buechel occupational license tax rate increased from 1% to 1.5%, effective *June 21, 2011*. The Shepherdsville and Versailles occupational license tax rates increased from 1% to 1.5%, effective *July 1, 2011*. The Winchester occupational license tax rate will increase from 1.5% to 2%, effective *Oct. 1, 2011* [Phone calls by *RIA* to municipalities on 8/24/2011].

The Kentucky Department of Revenue (DOR) has issued an August 2011 version of its *Instructions for Employers* booklet. The latest version of the booklet includes guidance on when the spouse of an armed forces service member may claim exemption from Kentucky income tax. Eligible spouses must file Form K-4M, *Nonresident Military Spouse Exemption Certificate*, with their employer, along with a copy of the employee's military spouse picture ID. The employer is required to submit the completed form to the DOR, along with a copy of the picture ID, within 30 days of receipt. The booklet also notes that W-2s may no longer be submitted on diskettes [DOR Publication 42A003, *Instructions for Employers*, 8/11].

MINNESOTA

Withholding. Beginning in October, the Minnesota Department of Revenue (DOR) will start to transition businesses that currently use the e-File Minnesota system to a new online system. The transition will begin with a limited number of businesses to make sure that taxpayers can comply with all deadlines for filing and paying. All businesses are expected to be transitioned to the new system by the end of the year. Once a business has been selected for transition, it will be redirected to a new screen with the heading, "Welcome to Minnesota e-Services!" after entering its Minnesota ID in e-File. The DOR will provide tutorials on its website, starting in late September, to help taxpayers use the new system. Businesses will be transitioned to the new system weekly. Users are encouraged to check every Monday to see if they have been selected for the transition. They shouldn't wait until their taxes are due to find out [DOR Notice, *New and Improved e-Services!*, 8/12/11].

NEW HAMPSHIRE

Wage Payment. 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. The New Hampshire Department of Labor (DOL) has now posted the following sample forms on its website that employers may give to their employees to obtain the employee's

authorization for wage deductions: (1) Authorization for Voluntary Payroll Deduction; (2) Authorization for Accidental Overpayment Deduction.

NORTH CAROLINA

Withholding. There is now a new ACH debit batch payment system. The system is web-based, unlike the current software-based system. Taxpayers no longer need to update ACH software. The new system also offers edit and history features to help manage payments. The new system became available to taxpayers on Aug. 26, 2011. The North Carolina Department of Revenue (DOR) will no longer support the old system *beginning Sept. 26, 2011*. More than 7,000 taxpayers that upload batches of 10 or more payments to the DOR will be affected by this change [DOR Announcement, *New ACH Debit Batch Payment System*, 8/19/11].

OHIO

Withholding. The president and sole shareholder of a corporation was personally liable for unpaid withhold-

ing tax. Although the taxpayer did not engage in the day-to-day affairs of the corporation, the facts indicated that he clearly had the authority to exercise control over the corporation's fiscal responsibilities. Consequently, the trial court's decision finding the taxpayer personally liable was affirmed [*Ohio Dept. of Taxation v. Peters*, Ohio Ct. App., Case No. CA2010-10-014, 8/15/11].

PUERTO RICO

Withholding. The Government of Puerto Rico has issued an Aug. 9, 2011 version of Form 499 R-4.1, *Puerto Rico Withholding Exemption Certificate*. There is now a box on the form for employees to check if their annual gross wages will not exceed \$20,000. Employers no longer have to take out withholding on wages earned by these employees, unless the employee elects to have withholding deducted on Form 499 R-4.1.



© 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