May 2015 • Vol. 6 • No. 3

UHY

UHY LLP
Mid-Atlantic

Nonprofit Insider

UHY LLP provides solutions to nonprofit firms in accounting, tax and consulting.

Mobile Workforce: Do You Know Where Your Employees Are?

by Tracey Powell, Senior Manager

Many organizations are expanding their multi-state and international footprint. This expansion often includes hiring or deploying a mobile workforce. These employees could potentially travel across state lines several days a week to visit external clients or internal colleagues from other offices, to attend meetings and conferences, and, otherwise, to transact business. Many of these organizations are unaware of the complexities of each state's personal income tax rules and withholding and reporting requirements.

When a nonresident employee performs services or works on behalf of the organization in another state, the employer could be required to withhold and remit state income taxes on the wages earned in the nonresident state, the state where the organization is not based or where the employee is not a resident. Withholding on wages of nonresidents is required of an out-of-state employer if the employer transacts business in the state. Operating or engaging in business by an employee on behalf of the employer in a state, even though these activities are not sufficient to create an income/franchise tax business filing requirement for the employer, would likely be considered transacting business for income tax withholding purposes.

Lack of State Nonresident Withholding Uniformity

Every state has its own laws regarding state income tax withholding for nonresident employees. While some states provide for either a day or dollar *de minimis* threshold, the majority of states require employers to withhold from the very first day or dollar earned in the state. This lack of uniformity requires employers who deploy a mobile workforce to comprehend and apply a patchwork of state rules.

Several states have entered into reciprocal agreements exempting employers in neighboring states from withholding taxes of its employees earning income in a neighboring state. For instance, Maryland has entered into reciprocal agreements with three border states—Pennsylvania, Virginia, West Virginia—and with the District of Columbia. These agreements provide that Maryland businesses sending employees into the border state are not required to withhold the other state's income tax on the compensation paid there, and vice versa.

Compliance Burden for the Employer

Given this lack of uniformity, it's not surprising that employers do not al-

continued on page 2

The Next Level of Service

For more information, please contact Matt Duvall at mduvall@uhy-us.com

8601 Robert Fulton Drive | Suite 210 | Columbia, MD 21046 | 410-423-4800 | Fax 410-381-5538 | www.uhy-us.com

Mobile Workforce
continued from page 1

ways know or follow these state rules. Many employers fail to understand their obligation to withhold the other state's income tax from the employee's income earned outside their home state. The lack of uniformity creates complexity for employers that want to be compliant.

Accurately tracking employees' time and wages in other states means having to adjust timekeeping systems and payroll systems. Employers must be able to flag when an employee is working in another state. Another complication is how to handle salaried employees who are not paid hourly wages and do not have to track time at all. Thus, tracking of these employees is generally a manual process. This data could be further skewed if the traveling employee does not remit, or excludes, a certain day's worth of information, whether they intended to or not.

Telecommuting can also present significant issues for withholding. Typically the default is for employers to withhold income tax for the state in which the employee performs services. However, an employee may telecommute from State A but report to State B. In most instances, the employer will have to withhold from State A because that is where the services are performed.

Employers that are required to deduct and withhold state income tax from wages of nonresident employees could be liable for the payment of the associated tax whether or not it is collected from the employees. In addition, substantial interest and penalties can accrue for not complying with state(s) nonresident withholding requirements.

Compliance Burden for the Employee

Employees must determine if their activity in a nonresident state is subject to tax even if their employer withheld payroll taxes for the state. Thus, employees often file multiple state individual income tax returns to either pay additional taxes or claim a refund on income incorrectly withheld.

> "Employers must be able to flag when an employee is working in another state."

Spending several hours to complete and file a few or numerous nonresident state tax returns resulting in aggregate a few hundred dollars in state income tax is something an employee wants to avoid and is not high on their list after traveling and working possibly a 10+ hour day. Most so-called road warriors do not file the nonresident returns nor do they have income tax withheld in these states.

What if one employer does withhold from the employee's paycheck for the nonresident state(s) and another employer in the same industry does not do this for their mobile employees? All else being equal, the employee could consider working for the other employer to avoid dealing with the nonresident state income tax return compliance.

Need a Uniform Standard

With a new 114th Congress, The Mobile Workforce State Income Tax Simplification Act, which has been proposed several times in Congress, most recently in November 2013, is expected to be reintroduced in 2015. A state is entitled to tax income earned within its borders. The act would limit state and local government authority to tax income of nonresident employees working within their borders on temporary assignments by providing a 30-day bright-line rule before a state can impose tax on the employee or withholding obligations on the employer. This would apply uniformly to all 50 states.

Such laws will certainly ease the employer's compliance issues of withholding income taxes from traveling employees. While this simplifies things for employers, they still have the burden to prove time and wages of employees working in multiple states.

Conclusion

As states have different withholding rules, employers must be cognizant of where their employees are earning income and properly withhold taxes when income is earned outside the employee's home state, as well as what exemptions are available.

Additionally, an employee's physical presence, depending on the extent and frequency, will likely create other state tax obligations for the employer, such as sales tax collection obligations or corporate income/franchise tax liability.