

Statement of  
Dee Nelson, CPP

Payroll Manager  
Alutiiq, LLC, and Subsidiaries

Member  
American Payroll Association  
1601 18<sup>th</sup> Street NW, Suite 1  
Washington, DC 20009  
202-232-6888  
[www.americanpayroll.org](http://www.americanpayroll.org)



Before the  
U.S. House of Representatives  
Committee on the Judiciary  
Subcommittee on Commercial and Administrative Law

Hearing on H.R. 3359  
The Mobile Workforce State Income Tax Fairness and Simplification  
Act of 2007  
The Honorable Linda T. Sanchez, Chair  
November 1, 2007

**Dee Nelson, CPP  
Payroll Manager  
Alutiiq, LLC, and subsidiaries**

Dee Nelson currently works as Payroll Manager for Alutiiq, LLC, a company that provides government contracting services. Previously, she served as Payroll Manager for Evergreen International Aviation, Inc., and as Business Manager for Shaw Infrastructure, Inc.

Ms. Nelson has over 17 years of experience as a payroll professional. An active member of the American Payroll Association since 1998, she is a member of the APA's Automated Clearinghouse Committee, Nominating and Elections committee, and the Global Affairs Task Force, as well as the Hotline Referral Service and CHAMPS. She also leads study groups for APA's Fundamental Payroll Certification and Certified Payroll Professional examinations. She received APA's Meritorious Services Award in 2003 and the Special Recognition Award in 2007. At the state level, she has served as President of both the Northern Lights Chapter and the Matanuska-Susitna Valley Chapter.

Ms. Nelson holds the designation of Certified Payroll Professional.

**American Payroll Association  
Washington, DC  
202-232-6888**

The American Payroll Association is a non-profit association representing payroll professionals. APA's members include over 23,000 payroll professionals, most of whom perform payroll-processing duties for approximately 17,000 employers. Additionally, our membership includes representatives of large, medium, and small payroll service providers, who in turn process payrolls for an additional 1.5 million employers, representing an aggregate total of one-third of the private-sector workforce. The employers for whom APA members process payrolls are diverse in terms of business size, location, and industry. As payroll specialists, APA's members must determine proper employment tax withholding, prepare and file accurate information returns and statements, correct (when necessary) such information returns and statements, calculate and deposit taxes, and maintain all necessary payroll records.

APA's central mission is to educate its members and the entire payroll industry about the best practices associated with paying America's workers their wages while successfully complying with all federal, state, and local wage payment, employment, tax withholding, child support enforcement, and information reporting laws. It achieves this mission through a variety of educational opportunities, including professional certification, print and online news publications, reference books and materials, and national, regional, and local seminars and conferences.

APA's secondary mission is to work with legislative and executive branches of all levels of government to find effective ways for employers to meet their compliance obligations and support various government objectives while minimizing administrative burden for government, employers, and individual workers/taxpayers.

## **Statement of Dee Nelson, Certified Payroll Professional**

Good afternoon. My name is Dee Nelson, CPP, and I am speaking today on behalf of the American Payroll Association in favor of HR 3359, the Mobile Workforce State Income Tax Fairness and Simplification Act of 2007.

The American Payroll Association is a non-profit professional association of over 23,000 members. Most of our members are the payroll managers for their employers, and some of our members work for payroll service providers, who in turn process the payrolls of another 1.5 million employers.

I have been a payroll professional for 17 years, and for the last 10 of those years, I have worked for multi-state employers. Having worked in this environment, I know first hand the problems that employees and employers face in trying to manage their way through the multi-state requirements to withhold proper state and local income taxes.

Even in the case of an employee who resides in one state and works throughout the year in another state, state and local tax withholding and reporting can be very complicated. The employer has to verify the employee's state of residence, check whether the two states have a reciprocity agreement, analyze the tax laws of both states, and likely withhold tax for both states and prepare a Form W-2 for both states.

Of the 41 states with income tax withholding, most tax all wages earned within their borders by residents of other states. Some have varying de minimis amounts, or thresholds, that need to be exceeded before withholding is required. The thresholds differ widely, including various numbers of days worked within the state and various wage amounts earned. (The District of Columbia has an income tax but does not impose it on nonresidents who earn wages within the District.)

Just as the United States taxes its citizens and residents on their worldwide income, so do the states impose a tax on their residents who earn income outside their borders. If the employer has nexus – that is, a business connection – within the employee's state of residence, it generally must withhold tax for the state of residence in addition to the state in which the services are performed. Again, the states vary on their requirement to withhold tax from their residents who work elsewhere. Some want full withholding, some want withholding only if there is no withholding being taken for the state in which the services are performed, and some want withholding less a credit for whatever withholding is taken for the state in which the services are performed. Besides the withholding requirement, each state also has its own wage reporting requirement.

I offer this as background to how much more complicated it becomes when an employee has a temporary assignment to another state.

Whenever an employer sends an employee to a worksite outside of the state in which the employee normally performs services, the requirements that are then imposed on the employer, such as to register for a withholding account and to withhold tax, create a very burdensome process. As a payroll professional it is my duty to ensure that taxation is happening properly for the state in which the employee is working as well as the state in which the employee claims residency. As I mentioned, there is no consistent guidance on what to do in each particular case of an employee temporarily working in a new state due to the fact that each state has its own set of tax laws and regulations applicable to non-resident workers. In addition not all states

impose these regulations in the same manner, and each pairing of states (state of residence and state of service) creates a new requirement.

What I do for an employee who is a California resident who temporarily goes to work in New York is completely different from what I do for the same employee if he or she goes to work in New Jersey or Georgia. If I send an employee who is an Oregon resident to temporarily work in New York, New Jersey, or Georgia, I will be required to handle it entirely differently than I did for the California resident.

The current process is not only burdensome but costly to both employees and employers.

As a multi-state employer, not only are we required to withhold taxes for each of the states in which our employees may temporarily work, but we also have the responsibility to register our business in each of the states in which we are required to pay a tax. The registration process for businesses can be just as burdensome as trying to manage the tax itself. In the case of my company's employees, we move them from state to state numerous times a year. This work is temporary in nature and is constantly changing in terms of where, when, and for how long we send employees.

Often, we have to send our employees to a new state or locality at a moment's notice, and we will begin withholding and accumulating tax for a new jurisdiction before we have even registered our business there. Sometimes the tax has to be deposited with the jurisdiction under a status of "account applied for," and a reconciliation has to be performed once the withholding account is established.

This process is very time consuming and utilizes many of my payroll department staff resources for a small group of our employees. In order to ensure timely deposits and filings for all these states due to the temporary work situations, we have outsourced our tax filing to an outside payroll service provider. We still have the burden of tracking the employees' work locations and the time spent in each one, and that is often a manual process. Of course, the outsourcing of the tax filing has increased the cost of compliance.

Our employees are also burdened. Each employee has to file a state personal income tax return for each state for which tax was taken from their pay. For some of our employees, this can mean up to eight state tax returns in addition to the one for their home state.

Most of the states have thresholds of income – not to be confused with wages – such as a standard deduction based on filing status, below which no income tax is due. Payroll systems, of course, have no way of detecting whether an employee will be in a state for one week or three months. Rather, payroll systems generally apply withholding calculations based on an expectation that, whatever the employee earned in that jurisdiction in the current pay period, the employee will earn that much in that jurisdiction in every other pay period of the year. So, state withholding is taken, even from someone who spends only one week in that state out of the entire year. In such a situation, the employee, of course, has to file a state personal income tax return and will likely get a refund of all of that withholding.

So, because there is no standard threshold of wages as a minimum amount before withholding is required, employers have to withhold tax and report wages, employees must file income tax returns, and in cases like these, states have to process wage reports and income tax returns of individuals for whom they will refund all taxes withheld. That's a lot of time, effort, and burden with no positive return for the employer, the employee, and the state.

At my company, to assist our employees and to ensure we can keep their positions filled, we pay for the preparation of their additional tax returns. Of course, tax preparation assistance is a taxable benefit, so we have to add the value of it to our employees' wages, and, to save the employee from an additional tax burden, we pay the taxes on it on their behalf (and paying those taxes is another taxable benefit). This results in a cost of approximately \$50,000 annually for our company.

I've told you about the processes and burdens at my company. However, it certainly can be said that, due to the extreme complexity of the varying current state tax regulations, there are many companies that are not withholding properly due to ignorance or due to lack of systems, personnel, time, money, or other resources to uphold the complex rules. More employers will comply with a law that is uniform across all states and localities and that is federally supported, versus the current patchwork of laws of which an employer might not even be aware.

The American Payroll Association and its 23,000 members strongly recommend that this legislation be considered and enacted so that the burden and cost of administering multi-state taxes by American workers and American businesses can be reduced and so that we can ensure fair and consistent handling of this employment issue and the related taxes across the nation.

I thank you for the time you have allowed me to speak to you and look forward to watching this important legislation pass.

# Multi-State Income Taxation: For Which State Must You Withhold?

If your company has operations in more than one state, you may be faced with income tax withholding for more than one state. Sometimes, you may even have to withhold income tax for more than one state from the same employee. Withholding can get even more complicated when you have employees who live in a different state than the one they work in or who perform services in more than one state.

Deciding which state's income tax to withhold can be a confusing process. How do you determine who is a resident and whether you should follow the laws of the state of residence or the laws of the state in which services are performed? Not all states answer these basic questions in the same way and, sometimes, state laws conflict. Even the simple word "operations," as used in the paragraph above, is more complex than you might think.

## From a basic rule of thumb to three rules

The default rule of state income tax withholding that can be used as a starting point is to withhold income tax for the state in which services are performed. It can be applied in most situations in which the employee lives and works in the same state (assuming it is not one of the nine states without income tax withholding: Alaska, Florida, Nevada, New Hampshire, South Dakota, Tennessee, Texas, Washington, and Wyoming).

However, up to three other withholding rules may have to be considered when the situation is not as straightforward. For example, an employee who lives and works in one state may still be a resident of some other state; that's where withholding Rule No. 1 comes into play. In this scenario, the employee may have income tax liability for the state of residency, and, if you have operations in that state and meet certain other criteria, you may be required to withhold for that other state. On the next level, if an employee lives in one state and works in another, each state's laws of reciprocity (withholding Rule No. 2) and resident/non-resident taxation policies (withholding Rule No. 3) must be examined.

## Withholding Rule No. 1: Resident defined

The very first determination that must be made is the state of residence of the employee. This is primary because a resident of a state is subject to the laws of that state, including its income tax laws. Furthermore, states have varying policies on withholding from residents who perform services in another state and from nonresidents who perform services within the state. To locate and apply the policies correctly, you'll need to know which state(s) can claim the employee as a resident.

Employees commonly claim that they are a resident of their "home" state. If the employee has relocated to work for you, he/she may assert that the former state is his/her state of residence because he/she still has a home and family there (and doesn't want to complete personal income tax returns for two states). An employee who works for you only during the nine months of the school year, for example, might try to claim that she is a resident of the state she grew up in but in which she now spends only three months of the year. This may be especially likely if her home state doesn't have an income tax.

The material in this handout is reprinted from the 2007 edition of *Payroll Issues for Multi-State Employers* with the permission of the American Payroll Association.

It’s up to you to locate and follow the rules of the appropriate state. Most states have a two-pronged definition of residency, outlining that someone will be a resident by either:

- being domiciled in the state, or
- spending more than a certain number of days in the state.

The term “domicile” usually means the place where an individual has a true, fixed, permanent home and principal establishment, and it usually means the place to which the individual intends to return. Common indicators that an individual is domiciled in a particular location include:

- property ownership,
- bank accounts,
- driver’s license and vehicle registration,
- voting registration,
- presence of family, and
- club and church memberships.

## Who is a Resident?

<b>STATE DEFINITIONS OF A RESIDENT FOR INCOME TAX WITHHOLDING</b>	
<b>State</b>	<b>Definition</b>
Alabama	A person having a permanent place of abode or who is domiciled in the state and spends more than 7 months a year in the state.
Alaska	Not applicable.
Arizona	A person domiciled or who spends more than 9 months a year in the state, unless there for a temporary or transitory purpose.
Arkansas	A person domiciled or who maintains a residence and spends 6 months a year in the state.
California	A person domiciled in the state or in the state for other than a temporary or transitory purpose (Franchise Tax Board Publication 1031 explains “temporary or transitory”). A person working on a contractual foreign assignment and in California for no more than 45 days in any consecutive 18-month period is not a resident.
Colorado	A person who maintains a permanent place of abode or who is domiciled in the state and spends at least 6 months of the year in the state.
Connecticut	A person who is domiciled or has a permanent place of abode and spends more than 183 days of the year in the state. Excludes certain individuals domiciled in the state but present in a foreign country for at least 450 days during any period of 548 consecutive days.
Delaware	A person who is domiciled, maintains a permanent place of abode, and spends more than 183 days of the year in the state. A person who is in a foreign country for at least 495 full days in any consecutive 18-month period, is not present in Delaware for more than 45 days during that period, and does not have a permanent place of abode in Delaware where a spouse, children or parents are present for more than 45 days during that period, is not a resident.
Dist. of Col.	A person who is domiciled in D.C., or who has a place of abode in D.C.

<b>STATE DEFINITIONS OF A RESIDENT FOR INCOME TAX WITHHOLDING</b>	
<b>State</b>	<b>Definition</b>
Florida	Not applicable.
Georgia	Anyone who is a legal resident on income tax day, resides in the state on a regular basis (not temporary or transitory), or resided in the state for 183 days of the immediately preceding 365 days.
Hawaii	Any person domiciled or residing in the state; to “reside” in the state means to be in the state for other than a temporary or transitory purpose and for more than 200 days of the year.
Idaho	A person who is domiciled or maintains a place of abode in Idaho for the entire year and spends more than 270 days of the year in Idaho.
Illinois	Any person who is domiciled in the state or in the state for other than a temporary or transitory purpose during the year.
Indiana	Anyone who resides in Indiana for the entire year, or has a permanent place of abode in Indiana and spends more than 183 days of the year in the state.
Iowa	A person domiciled in or maintaining a permanent place of abode in the state.
Kansas	A person domiciled in or spending more than 6 months of the year in the state.
Kentucky	A person who is domiciled, maintains a permanent place of abode, and spends more than 183 days of the year in the state.
Louisiana	Anyone domiciled, maintaining a permanent place of abode, or spending more than 6 months of the year in the state.
Maine	A person who is domiciled, maintaining a permanent place of abode, and spending more than 183 days of the year in the state.
Maryland	A person who is domiciled in Maryland on the last day of the year, or has a place of abode in Maryland for more than 6 months of the year regardless of domicile.
Massachusetts	A person who is domiciled in the state, or who maintains a permanent place of abode and spends more than 183 days of the year in the state.
Michigan	A person who lives in the state at least 183 days of the tax year (or more than half the days for a tax year of less than 12 months).
Minnesota	A person domiciled in or who maintains a place of abode in the state and spends more than one-half of the year in the state.
Mississippi	A person domiciled or who has a residence in the state.
Missouri	A person domiciled or who has a permanent place of abode in Missouri and spends more than 183 days of the year in the state.
Montana	A person who has a domicile or who maintains a permanent place of abode within the state and is temporarily absent but has not established a permanent residence elsewhere.
Nebraska	A person who is domiciled in or who has a permanent home in Nebraska and spends more than 6 months of the year in the state.
Nevada	Not applicable.
New Hampshire	Not applicable.



<b>STATE DEFINITIONS OF A RESIDENT FOR INCOME TAX WITHHOLDING</b>	
<b>State</b>	<b>Definition</b>
New Jersey	Any person domiciled in the state for the full year or who has a permanent home in the state and spends more than 183 days of the year in the state.
New Mexico	An individual domiciled in New Mexico during all of the tax year, or an individual who is physically present in New Mexico for a total of 185 days or more in the aggregate during the tax year, regardless of domicile (i.e., the place where an individual has a true, fixed, permanent home); an individual domiciled in New Mexico who is physically present in New Mexico for fewer than 185 days and moves out-of-state with the intention of living there permanently is not a resident for the period after the change of domicile.
New York	A person who is domiciled in the state, unless: (1) the person does not have a permanent place of abode in New York, has a permanent abode elsewhere, and spends no more than 30 days of the year in the state; or (2) is in a foreign country or countries for at least 450 out of 548 consecutive days (approximately 15 out of 18 months), is not in New York for more than 90 days during the 548-day period, and does not have a permanent residence in the state where a spouse or children live for more than 90 days during the 548 day period.
North Carolina	A person domiciled in the state during any part of the year or who resides in the state for other than a temporary or transitory purpose. A person living in the state for more than 183 days of the tax year is presumed to be a resident.
North Dakota	A person domiciled, or who maintains a permanent place of abode within the state and spends more than 7 months of the year in the state.
Ohio	A person domiciled in or who maintains a permanent place of abode in the state.
Oklahoma	A person who maintains a permanent place of abode, or is domiciled in the state and spends more than 7 months of the year in the state.
Oregon	A person domiciled in Oregon or who maintains a permanent place of abode in Oregon and spends more than 200 days of the year in the state.
Pennsylvania	A person who is domiciled in the state (unless a permanent place of abode is maintained elsewhere and no more than 30 of the year days are spent in the state) or who has a permanent place of abode in the state and spends more than 183 days of the year in the state.
Rhode Island	A person who is domiciled in or who maintains a permanent place of abode in the state and spends more than 183 days of the year in the state.
South Carolina	A person domiciled in the state.
South Dakota	Not applicable.
Tennessee	Not applicable.
Texas	Not applicable.
Utah	A person who is domiciled in or who maintains a permanent place of abode in Utah and spends more than 183 days of the year in the state.
Vermont	A person who is domiciled or who maintains a permanent place of abode in Vermont and spends more than 183 days of the year in the state.
Virginia	A person who is domiciled or who maintains a permanent place of abode in Virginia and spends more than 183 days of the year in the state.

STATE DEFINITIONS OF A RESIDENT FOR INCOME TAX WITHHOLDING	
State	Definition
Washington	Not applicable.
West Virginia	A person who is domiciled (unless he/she has a permanent place of abode elsewhere and spends no more than 30 days of the year in the state) or who maintains a permanent place of abode and spends more than 183 days of the year in the state.
Wisconsin	A person who is domiciled in the state or in the state for other than a temporary or transitory purpose.
Wyoming	Not applicable.

## Withholding Rule No. 2: Reciprocity

If an employee performs services in a state other than the state of residence, you must find out whether the two states have a reciprocal agreement. A reciprocal agreement allows you to withhold only for the state of residence, as opposed to the state in which services are performed. (This is an example of why the rule of thumb is only a starting point.) Accordingly, you would report wages only to the state of residence when completing Boxes 16-17 (state wages) of federal Form W-2, *Wage and Tax Statement*. In most cases, the employee will be required to submit a certificate of non-residence for the state in which he/she works before you can honor the reciprocal agreement.

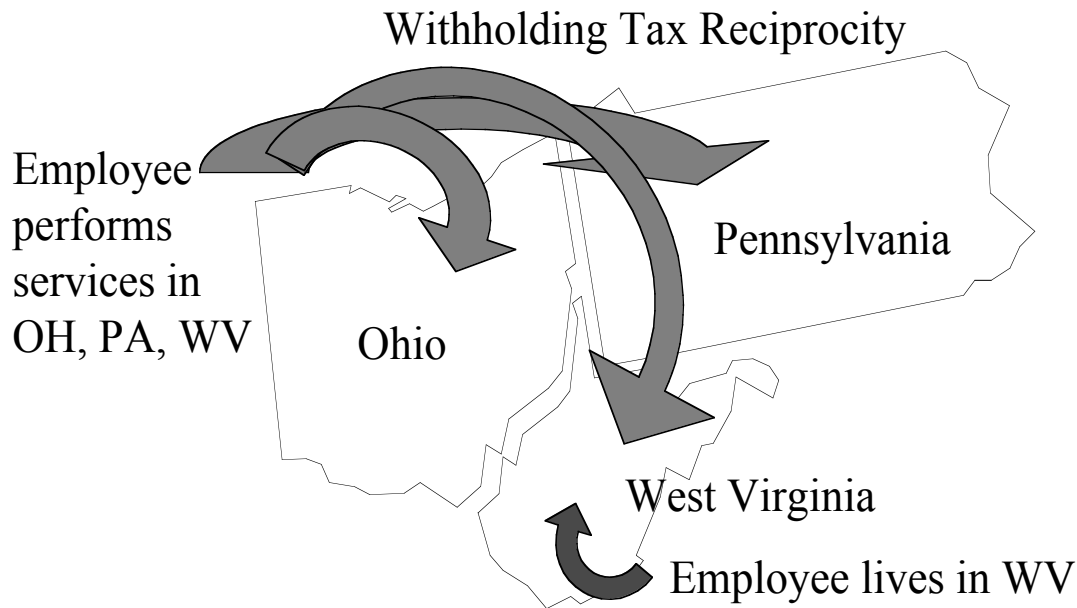
The general purpose of reciprocity is to make things administratively easier for the employee and employer. The employee will have to file only one state personal income tax return, and the employer will withhold only for the state in which the employee lives. This is especially helpful if you have an employee who performs services in two or more states that have reciprocity with the state of residence. For example, for an employee who lives in Kentucky, works in Kentucky, Illinois, and Indiana, and submits certificates of non-residence for Illinois and Indiana, the employer will need to withhold only Kentucky income taxes because the three jurisdictions have reciprocal agreements with each other. Without reciprocity, the employer would have to withhold for all three jurisdictions based on the time worked in each one. On the other hand, the presence of a reciprocal agreement requires you to change the state of withholding and reporting if the employee moves his/her residence from one state to another, even though there has been no change in the state in which the services are performed.

## Reciprocal Coverage

RECIPROCAL WITHHOLDING AGREEMENTS BETWEEN STATES	
State	Reciprocal Agreements
Alabama	None
Alaska	Not applicable.
Arizona	None
Arkansas	Border city exemption for residents of Texarkana, which is located on the border of Texas and Arkansas. Residents of Texarkana, Arkansas are exempt from Arkansas state income tax and withholding. Residents of Texarkana, Texas are exempt from Arkansas income tax for wages earned in Texarkana, Arkansas. Agreement does not apply to residents of other cities or other Texas residents working in other parts of Arkansas. Employer must supply Form AR-4EC (TX), <i>Texarkana Employee's Withholding Exemption Certificate</i> . Employer copy filed with Form AR-3Q-TEX.
California	None
Colorado	None
Connecticut	None
Delaware	None
District of Columbia	A reciprocal agreement is in effect with Maryland and Virginia. Non-resident employees of DC are not subject to DC withholding and must file Form D-4A, <i>Certificate of Non-Residence in the District of Columbia</i> .
Florida	Not applicable.
Georgia	None
Hawaii	None
Idaho	None
Illinois	Residents of Iowa, Kentucky, Michigan and Wisconsin are not subject to Illinois income tax withholding for wages earned in Illinois if Form IL-W-5NR, <i>Employee's Statement of Non-Residence in Illinois</i> , is filed with the employer. The reciprocal agreement with Indiana expired at the end of 1997.
Indiana	Residents of Kentucky, Michigan, Ohio, Pennsylvania, and Wisconsin are exempt from Indiana income tax withholding. They should complete Form WH-47, <i>Certificate of Residence</i> . The reciprocity is not applicable to county income taxes. The reciprocal agreement with Illinois expired at the end of 1997.
Iowa	Residents of Illinois have Illinois state tax withheld only if Form 44-016, <i>Employee's Statement of Nonresidence in Iowa</i> , is filed with the employer.
Kansas	None
Kentucky	Residents of Illinois, Indiana, Michigan, Ohio, West Virginia, and Wisconsin have only their resident state tax withheld if Form 42A809, <i>Certificate of Nonresidence</i> , is filed with the employer. Daily commuters between Kentucky and Virginia are provided reciprocal benefits.
Louisiana	None
Maine	None

<b>RECIPROCAL WITHHOLDING AGREEMENTS BETWEEN STATES</b>	
<b>State</b>	<b>Reciprocal Agreements</b>
Maryland	No Maryland tax is withheld from employees who commute daily to Maryland and reside in the District of Columbia, Pennsylvania, Virginia and West Virginia. A certificate of nonresidence (Form MW 507, <i>Employee Exemption Certificate</i> ) must be filed with the employer.
Massachusetts	None
Michigan	Michigan employers do not withhold Michigan state income tax from residents of Illinois, Indiana, Kentucky, Minnesota, Ohio, and Wisconsin. Michigan employees must file certificates of nonresidence to be exempt from withholding. A form is not provided.
Minnesota	Residents of Michigan, North Dakota, and Wisconsin are exempted from Minnesota withholding. Form MW-R, <i>Reciprocity Exemption from Minnesota Withholding, Affidavit of Residency</i> , is required to certify residency.
Mississippi	None
Missouri	None
Montana	Montana employers are not required to withhold Montana income tax from residents of North Dakota. A certificate of North Dakota residency is required (Form NR-2, <i>Employee Certificate of North Dakota Residence</i> ).
Nebraska	None
Nevada	Not applicable.
New Hampshire	Not applicable.
New Jersey	Pennsylvania residents filling out a certificate of nonresidence (Form NJ-165, <i>Employee's Certificate of Non-Residence in New Jersey</i> ) are not subject to New Jersey withholding.
New Mexico	None
New York	None
North Carolina	None
North Dakota	Residents of Minnesota and Montana working in North Dakota are not required to have North Dakota tax withheld. Form NDW-R, <i>Affidavit of Residency</i> , should be filed with their employer annually.
Ohio	Ohio has reciprocal agreements with Indiana, Kentucky, Michigan, Pennsylvania, and West Virginia. Form IT-4 NR, <i>Employee's Statement of Residency in a Reciprocity State</i> , must be filed with the employer to claim the exemption.
Oklahoma	None
Oregon	None
Pennsylvania	Pennsylvania has reciprocal agreements with Indiana, Maryland, New Jersey, Ohio, Virginia, and West Virginia. Form REV-420, <i>Employee's Statement of Nonresidence in Pennsylvania and Authorization to Withhold Other State's Income Tax</i> , must be filed with the employer. For New Jersey residents who work in Pennsylvania, the amount of any Pennsylvania local income tax withholding reduces the amount of New Jersey income tax to be withheld from those same wages.

<b>RECIPROCAL WITHHOLDING AGREEMENTS BETWEEN STATES</b>	
<b>State</b>	<b>Reciprocal Agreements</b>
Rhode Island	None
South Carolina	None
South Dakota	Not applicable.
Tennessee	Not applicable.
Texas	Not applicable.
Utah	None
Vermont	None
Virginia	Full reciprocal agreement with West Virginia but a certificate of nonresidence in Virginia must be filed. Daily commuters from District of Columbia, Kentucky, and Maryland filing a certificate of nonresidence are exempt from Virginia tax. Pennsylvania and West Virginia residents can file the certificate only if subject to the state income of the resident state.
Washington	Not applicable.
West Virginia	Reciprocal agreements are in place with Kentucky, Maryland, Ohio, Pennsylvania, and Virginia. A <i>West Virginia Certificate of Nonresidence</i> (found on the back of Form WV/IT-104) must be filed with the employer.
Wisconsin	Illinois, Indiana, Kentucky, Michigan and Minnesota residents working within Wisconsin must provide a written statement to their employer certifying the place of residence in order for the employer to not withhold Wisconsin income tax. Minnesota residents are required to fill out Form W-222, <i>Statement of Minnesota Residency</i> , annually. Others must fill out Form W-220, <i>Nonresident Employee's Withholding Reciprocity Declaration</i> .
Wyoming	Not applicable.



Report all wages on W-2 for West Virginia and withhold West Virginia tax from all wages, as West Virginia has reciprocal agreements with each of Ohio and Pennsylvania. Employee will have had to have submitted to employer the Ohio and Pennsylvania forms that declare non-residence in those states.

## **Nexus: business connection**

The word “nexus” literally means “connection.” Nexus is established by having a business presence in a state. An office, store, or factory will create nexus, as will the mere entry of an employee into a state to make a sale or perform a service call.

In the withholding context, the employer’s concern is whether it has a business connection, or any operations, within a state. If it does, it is subject to the withholding laws of that state. This will make the difference in whether an employer has to withhold income tax for an employee’s state of residence even though he or she performs no services there.

If an employer does not have nexus with an employee’s state of residence, but there is a reciprocal agreement between the two states, then the employer must honor the reciprocity agreement and not withhold income tax for the state where the employee works. However, the employer is not obligated to withhold income tax for the state where the employee lives because the employer does not have nexus with the resident state (the employee will have to make estimated payments).

If an employer does not have nexus in a state for which one of its employees will have a personal income tax liability, it can choose to establish a withholding account in that state and begin withholding as a courtesy to its employees. However, the payroll department should check with the corporate tax and

legal departments of the company first because once you voluntarily register for one tax, you may receive inquiries from the state about other taxes for which you are not liable, such as sales tax or corporate income tax. Also, in some states, withholding and paying over taxes may thereby establish nexus, making your company open to being sued in the courts of that state.

## **Withholding Rule No. 3: Resident/non-resident taxation policies**

If an employee is a resident of one state but performs services in another, and there is no reciprocal agreement, you must consider the laws of both states. The correct determination of the state of residency (Rule No. 1) is very important in these situations because it tells you which state's laws you may need to consider in addition to those of the state in which the employee works.

The state in which the services are performed will almost always require withholding from non-residents who come into the state to work (withholding only from the wages for services performed in that state). A few states have exceptions to this, usually based on whether the employee works in the state for less than a certain length of time or earns less than a certain amount of money. For example, if a California resident works in Arizona, Arizona withholding is required if the employee is physically present in the state for 60 days or more. In general, an employer is always subject to the laws of any state in which it has an employee performing services, whether or not the employer has a facility (such as an office, factory, or store) in the state.

The employee's state of residence may also need to be considered even if the employee doesn't work there. If the employer has a business connection, also referred to as "nexus," with the state in which the employee resides, then the employer is subject to the laws of that state even if the employee doesn't work there. For example, if the California resident works exclusively in Arizona for six months, and if the employer has nexus with California:

- Arizona withholding is required (the 60-day threshold is exceeded), and
- California withholding is required, with a credit for income tax withheld for the work-state (in this case, Arizona).

In this situation, the employer must first calculate and withhold Arizona income tax. Then the employer must calculate California income tax on the same wages and, if the California tax is greater, withhold an amount equal to the difference between the California income tax and the Arizona income tax. If the California tax is less than the Arizona tax, no California tax need be withheld.

If, however, the employer does not have nexus with California, then the employer is not subject to the laws of that state and is not required to withhold that state's income tax. However, the employee may have personal income tax liability on these and all other earned wages by virtue of being a resident of that state.

## **Employees working in multiple states without reciprocity**

If an employee works in multiple states that do not have reciprocity with the employee's state of residence, then the amount of wages earned in each state must be separately examined under withholding Rule No. 3. The first step is to split the wages by state, which may be done by the number of hours worked for an hourly employee or days worked for a salaried employee, or by the sales volume for a

commissioned salesperson. The employer will definitely have nexus in the state in which services are performed and will most likely (depending on the state’s law) need to withhold the work-state’s tax from the wages earned within the state. In addition, if the employer has nexus in the employee’s resident-state, it may need to consider withholding for that state from these wages as well.

There are exceptions to this process under the Amtrak Reauthorization and Improvement Act of 1990 (Pub. L. 101-322). Railroad and motor carrier employees (i.e., operators of a commercial motor vehicle, like a tractor, trailer, or semitrailer) who work in more than one state are subject only to the state and local income tax laws of their state of residence, regardless of where they work. Employees in air transportation are subject to withholding for their state of residence and any other state in which they earn more than half of their wages.

Under Pub. L. 106-89, merchant mariners employed in interstate commerce are subject to the state and local income taxes of their state of residence.

<b>WITHHOLDING ON RESIDENTS WORKING OUT-OF-STATE AND NONRESIDENTS</b>		
<b>State</b>	<b>Residents: Withholding Required on Services Performed Out-of-State (and Wage Reporting Requirement), If Nexus</b>	<b>Nonresidents: Withholding Required on Services Performed In-State</b>
Alabama	Yes (report on Form W-2), unless withhold for the state where services are performed (then don’t report on Form W-2); AL tax must be withheld if no tax is withheld for the other state.	Yes; if the nonresident works partly within and partly outside AL withhold only on the portion of wages earned in AL.
Alaska	Not applicable.	Not applicable.
Arizona	No, but employer may withhold where services are performed if requested by employee on Form A-4V (withholding for either state should be separately reported on Form W-2).	Yes, if physically present in the state for 60 days or more in the calendar year, but see reciprocity. If a nonresident works partly within and partly outside AZ, only the wages earned in AZ are subject to AZ withholding.
Arkansas	No, provided the other state imposes an income tax (don’t report on Form W-2); if the other state has no income tax, AR tax must be withheld on the out-of-state wages (and must be reported on Form W-2).	Yes, but see reciprocity. If a nonresident works partly within and partly outside AR only the wages earned in AR are subject to AR withholding.



<b>WITHHOLDING ON RESIDENTS WORKING OUT-OF-STATE AND NONRESIDENTS</b>		
<b>State</b>	<b>Residents: Withholding Required on Services Performed Out-of-State (and Wage Reporting Requirement), If Nexus</b>	<b>Nonresidents: Withholding Required on Services Performed In-State</b>
California	<p>Yes.</p> <p>If a resident's services are taxable in both CA and another state, first withhold as required by the other state, and then for CA withhold only the amount by which the CA withholding exceeds the withholding amount for the other state; or, do not withhold any CA PIT if the withholding amount for the other state equals or exceeds the withholding amount for CA.</p> <p>Report wages on Form W-2 and on quarterly Form DE 6.</p>	<p>Yes.</p> <p>If a nonresident performs services partly within and partly outside of CA, only the wages earned in CA are subject to CA PIT withholding; the amount of wages subject to PIT withholding is that portion of the total number of working days employed in CA compared to the total number of working days employed in both CA and the other state.</p> <p>Report all PIT wages and PIT withheld on Form DE 6.</p>
Colorado	<p>No, provided income tax is withheld for the state where services are performed (don't report on Form W-2); CO withholding is required if no state income tax is withheld for the work state (and CO wages must be reported on Form W-2).</p>	<p>Yes.</p>
Connecticut	<p>Yes, but only to the extent the CT withholding exceeds the withholding amount for the state where services are performed (report all wages on Form W-2). The CT resident will receive credit from CT for income tax paid to the other state for work performed in the other state (amounting to the lesser of the tax paid to the other state or the tax CT imposes on the out-of-state wages).</p>	<p>Yes, but only on that portion of the employee's wages that relate to services performed in CT.</p>
Delaware	<p>No, but the employee may elect to have DE tax withheld (if so, withhold first for the work state and then for DE, reducing DE withholding by the amount withheld and paid to the other state; report all wages on Form W-2).</p>	<p>Yes.</p>
District of Columbia	<p>Yes; an employee may claim a personal income tax credit for any income tax paid to another state for services performed there (report all wages on Form W-2).</p>	<p>No; non-resident employees working in DC are not subject to DC withholding and must file Form D-4-A, <i>Certificate of Non-Residence in the District of Columbia</i>.</p>
Florida	<p>Not applicable.</p>	<p>Not applicable.</p>

<b>WITHHOLDING ON RESIDENTS WORKING OUT-OF-STATE AND NONRESIDENTS</b>		
<b>State</b>	<b>Residents: Withholding Required on Services Performed Out-of-State (and Wage Reporting Requirement), If Nexus</b>	<b>Nonresidents: Withholding Required on Services Performed In-State</b>
Georgia	Yes, unless income tax is required to be withheld for the work state (report all wages on Form W-2).	Yes, if the nonresident works more than 23 days in a calendar quarter in GA, or if 5% of total earned income is attributable to GA or the remuneration is more than \$5,000.
Hawaii	Yes, even if tax is withheld by the work state on the same wages, but only if the regular place of employment is in HI or wages are paid from an office within HI (don't report the wages on Form W-2). A HI resident may receive credit on his/her personal income tax return for taxes paid to another state.	Yes, unless (1) the employee will perform services in HI for not more than 60 days in the calendar year, (2) he/she is paid from an office outside HI, (3) his/her regular place of employment is outside HI, and (4) the employer does not reasonably expect the employee to perform services in HI for more than 60 days during the calendar year; if all conditions are met except the 60-day requirement and the Director of Taxation finds that withholding would be burdensome or enforcement impractical, an exception from the withholding requirement may be allowed.
Idaho	Yes, withhold for the work state; but if the work state has no income tax then withhold for ID (report all wages earned in either state on Form W-2 even if no tax is withheld for the particular state).	Yes, unless employee earns less than \$1,000 in the year in ID or is exempt from federal income tax withholding (report all ID wages on Form W-2 even if no ID tax is withheld).
Illinois	Yes, if the employee's services are localized in IL (e.g., the out-of-state services are incidental to primary services the employee performs in IL), or, the services are not localized in any state but some services are performed in IL, and either the base of operations is in IL or the place from which the services are directed or controlled is in IL (report all wages on Form W-2). Withholding is also required if the employee's service is not localized in any state but some of the service is performed in IL, the base of operations or direction or control is not in any state in which some part of the service is performed, and the employee is an IL resident.	Yes, but see reciprocity. If the employee is a resident of a non-reciprocity state, IL income tax must be withheld on all income that is paid in IL if the services are performed entirely within IL. If the services are performed both inside and outside of Illinois, but the services performed outside IL are "incidental" to those performed in IL, all wages are subject to IL withholding. If the services performed outside IL are not "incidental" to those performed in IL, then the wages will only be subject to IL withholding if the employer has its base of operations in IL or the employee's services are controlled or directed from the employer's IL location.

<b>WITHHOLDING ON RESIDENTS WORKING OUT-OF-STATE AND NONRESIDENTS</b>		
<b>State</b>	<b>Residents: Withholding Required on Services Performed Out-of-State (and Wage Reporting Requirement), If Nexus</b>	<b>Nonresidents: Withholding Required on Services Performed In-State</b>
Indiana	Yes (report all wages on Form W-2).	Yes, but see reciprocity. Nonresidents working in IN must submit a completed Form WH-47 to the employer identifying the state of residence.
Iowa	Yes, withhold for the state in which the wages were earned, except Illinois which has a reciprocal agreement with Iowa (report all wages on Form W-2 for the work state(s)).	Yes, but see reciprocity.
Kansas	Yes, withhold from total wages the amount of KS tax due less the amount required to be withheld for the other state; if the other state's withholding amount is more, then no KS withholding tax is due (don't report on Form W-2).	Yes. If the nonresident performs services both within and outside of KS, withhold only on the wages earned in KS (determine withholding using the apportionment formula found on Form K-4C, <i>Kansas Nonresident Employee Certificate for Allocation of Withholding Tax</i> , submitted by the nonresident employee).
Kentucky	Yes (report all wages on Form W-2).	Yes, but see reciprocity.
Louisiana	Yes (report the wages on Form W-2), unless withholding is required in the state where the services are performed (then don't report the wages on Form W-2).	Yes. If a nonresident works partly within and partly outside LA, only the wages paid for services performed in LA are subject to LA withholding provided the employee files Form R-1300 (L-4), Employee's Withholding Exemption Certificate with the employer (if no certificate is filed then all of the wages paid to the employee are subject to LA withholding).
Maine	Yes (report all wages on Form W-2).	Yes, provided the nonresident works in ME for at least 10 days during the year. If the nonresident works partly within and partly outside of ME, withhold only on the ME source income.
Maryland	Not required if the employee is subject to withholding in the work state (and can receive personal income tax credit against the MD tax liability for taxes paid to the work state).	Yes, but see reciprocity.
Massachusetts	Yes, less any amount required to be withheld by the other state (report all wages on Form W-2 but do not send it to the state; also report all wages on quarterly Form WR-1).	Yes. For nonresidents who work partly within and partly outside of MA, withhold only on wages earned in MA.

<b>WITHHOLDING ON RESIDENTS WORKING OUT-OF-STATE AND NONRESIDENTS</b>		
<b>State</b>	<b>Residents: Withholding Required on Services Performed Out-of-State (and Wage Reporting Requirement), If Nexus</b>	<b>Nonresidents: Withholding Required on Services Performed In-State</b>
Michigan	Yes, with personal income tax credit for any taxes paid to the other state (report all wages on Form W-2).	Yes, but see reciprocity.
Minnesota	Yes, if federal income tax withholding from the employee's wages is required (report all wages earned on Form W-2), but see reciprocity.	Yes, but see reciprocity.
Mississippi	Yes (report separately the wages earned in each state and the amount withheld for each state on Form W-2), unless withholding is required by the work state (then don't report on Form W-2).	Yes. If the nonresident's principal place of employment is outside MS but he/she works partly within and partly outside of MS, only wages for work performed in MS are subject to withholding. If the nonresident's principal place of employment is within MS but he/she occasionally works outside of MS, withhold MS tax on total wages unless withholding is required by the other state.
Missouri	Yes, if the work state does not have a state income tax (report the wages on Form W-2); if work is performed partly within and partly outside MO only wages paid for work performed in MO is subject to MO withholding provided the work performed in the other state is subject to the other state's income tax.	Yes if all work is performed in MO. If work is performed partly within and partly without MO, only wages paid for work done in MO is subject to MO withholding provided the employee files Form MO W-4A, <i>Certificate of Nonresidence/ Allocation of Withholding Tax</i> .
Montana	Yes, even if the employee is subject to withholding in the work state (report all wages on Form W-2).	Yes, but see reciprocity.

<b>WITHHOLDING ON RESIDENTS WORKING OUT-OF-STATE AND NONRESIDENTS</b>		
<b>State</b>	<b>Residents: Withholding Required on Services Performed Out-of-State (and Wage Reporting Requirement), If Nexus</b>	<b>Nonresidents: Withholding Required on Services Performed In-State</b>
Nebraska	Yes; withhold from total wages the amount of NE income tax less the amount required to be withheld for the other state(s) (report all wages on Form W-2).	Yes, a nonresident who works in NE and whose wages are subject to federal withholding is subject to the same withholding on their entire wages as that used for NE residents. Form 9N, <i>Employee Certificate for Allocation of Withholding Tax</i> , may be filed with the employer by a nonresident employee who works for an employer in both NE and other states to designate the approximate percentage of the wages subject to NE withholding (but this does not determine the wage amount that must be included on the Form W-2 as NE wages).  A nonresident who performs personal services in NE but is not subject to federal withholding may still be subject to NE income tax withholding.
Nevada	Not applicable.	Not applicable.
New Hampshire	Not applicable.	Not applicable.
New Jersey	Yes. If all services are performed out of state, first withhold as required by the other state, then withhold for NJ only the amount by which the NJ withholding exceeds the withholding amount for the other state. Report on Form W-2 all wages paid for work performed both inside and outside NJ and indicate to which state(s) tax was remitted.	Yes, but see reciprocity.  If a nonresident performs all services in NJ, the tax must be withheld from all wages paid to the employee. If a nonresident works partly within and partly outside NJ, only the wages paid for services performed in NJ are subject to withholding.
New Mexico	Yes (report all wages on Form W-2).	Yes, unless the nonresident works in NM for 15 or fewer days in the calendar year.
New York	Yes, with personal income tax credit for any taxes paid to the other state or locality on income earned in that jurisdiction while a NY resident. Unemployment insurance rules of coverage are followed to determine withholding and what wages to report and the state they should be reported to. Report all wages on Form W-2 but do not send them to the state; report on 4th quarter Form NYS-45.	Yes, unless the nonresident works in NY for 14 or fewer days in the calendar year (any part of a day spent performing services in NY counts as a full day). The 14-day rule does not apply to payments made to nonresident athletes and entertainers performing services in NY, or to payments of deferred compensation or nonstatutory stock options.

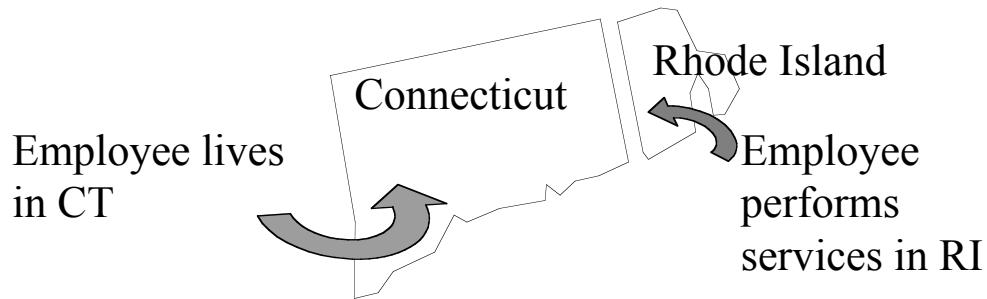
<b>WITHHOLDING ON RESIDENTS WORKING OUT-OF-STATE AND NONRESIDENTS</b>		
<b>State</b>	<b>Residents: Withholding Required on Services Performed Out-of-State (and Wage Reporting Requirement), If Nexus</b>	<b>Nonresidents: Withholding Required on Services Performed In-State</b>
North Carolina	Yes (report all wages, no matter where earned, and the NC tax withheld on Form W-2), unless state income tax is required to be withheld for the work state (then don't report on Form W-2).	Yes (report all NC wages and NC tax withheld on Form W-2; or, if show the total wages for the year and the total state tax withheld, provide a breakdown showing the wages paid and tax withheld for each state); any relief from double withholding must be granted by the employee's state of residence.
North Dakota	Yes, if the employer's main place of business is located in ND and if the wages are subject to federal income tax withholding (report wages on Form W-2); ND withholding is not required if the employer is required by the other state to withhold that state's income tax from the employee's wages.	Yes, but see reciprocity.
Ohio	Yes (report on Form W-2).	Yes, but see reciprocity.
Oklahoma	Yes, even if withholding is required by the work state. Report the out-of-state wages on Form W-2 as OK wages in addition to reporting them as wages for the work state.	Yes, unless earnings are less than \$300 in a calendar quarter.
Oregon	Yes, unless tax is withheld for the work state (report all OR wages on Form W-2); if the resident paid tax to OR and another state he/she may claim a credit on their OR return for income taxes paid to the other state. Withholding is not required for Oregon resident employees if the employer has no employees working in Oregon, but the state prefers withholding on wages paid to Oregon residents as a convenience to the employees.	Yes, unless employee's Oregon earnings for the year will be less than his/her standard deduction amount for his/her filing status. Non-resident employees with wages greater than their standard deduction amount must file an Oregon non-resident tax return.

<b>WITHHOLDING ON RESIDENTS WORKING OUT-OF-STATE AND NONRESIDENTS</b>		
<b>State</b>	<b>Residents: Withholding Required on Services Performed Out-of-State (and Wage Reporting Requirement), If Nexus</b>	<b>Nonresidents: Withholding Required on Services Performed In-State</b>
Pennsylvania	<p>Withhold PA tax on all wages paid if all services are performed in the other state and the other state has no income tax (report all PA taxable compensation paid to the employee on Form W-2).</p> <p>Do not withhold PA tax if the other state has an income tax which the employer is withholding (but report on Form W-2 the wages earned in PA even though no PA tax was withheld).</p> <p>If PA resident's services are performed partly within PA and partly in another state and the employer withholds the other state's income tax, employer must also withhold PA tax on the services rendered in PA (report all PA taxable compensation on Form W-2); if the other state has no income tax, employer must withhold PA income tax on the employee's total compensation.</p>	<p>Yes, withhold PA tax on all wages if all services are performed in PA, unless a reciprocal agreement applies; if services are performed only partly within PA, withhold PA tax only on wages paid for the services performed within PA provided adequate current records are maintained to determine accurately the amount of compensation earned in PA (if such records are not maintained, the employer must withhold on all compensation paid to a nonresident who works partly within and partly outside PA).</p>
Rhode Island	Not required.	Yes
South Carolina	Yes (if employee is paid \$800 or more per year), unless withhold state income tax for the work state (report all wages earned on Form W-2).	Yes (if employee is paid \$800 or more per year); if enter a contract exceeding \$10,000 with a nonresident contractor for temporary services to be performed in SC withhold SC tax from the payments.
South Dakota	Not applicable.	Not applicable.
Tennessee	Not applicable.	Not applicable.
Texas	Not applicable.	Not applicable.
Utah	Yes; personal income tax credit is allowed if income tax is withheld for the work state (don't report the wages on Form W-2).	Yes, unless the employer does business in the state for 60 days or less in the year and has received an exemption certificate from the state.

<b>WITHHOLDING ON RESIDENTS WORKING OUT-OF-STATE AND NONRESIDENTS</b>		
<b>State</b>	<b>Residents: Withholding Required on Services Performed Out-of-State (and Wage Reporting Requirement), If Nexus</b>	<b>Nonresidents: Withholding Required on Services Performed In-State</b>
Vermont	Yes. Withholding is calculated on the employee's entire earnings and is then reduced by the amount of tax withheld for the work state (don't report the out-of-state wages on Form W-2). If the employee works partly within and partly outside of VT for the VT employer and the other state has no income tax, withhold on all the wages paid; if the other state does have an income tax, withhold both VT tax and the tax for the work state on the services performed there.	Yes. If a nonresident works partly within and partly outside of VT, only compensation for services performed in VT is subject to withholding.
Virginia	No, unless the other state has no income tax or there is a reciprocal agreement with the other state which requires withholding. Employees subject to tax in the other state are entitled to credit for those taxes against the amount of tax owed to VA (the employee should file Form VA-4B, <i>Employee's Withholding Income Tax Credit for Income Taxes Paid to Another State</i> ).	Yes, but see reciprocity.
Washington	Not applicable.	Not applicable.
West Virginia	Yes (report all wages on Form W-2).	Yes, but see reciprocity. If the nonresident works entirely within WV, withhold from all wages paid to the employee.
Wisconsin	Yes (report all wages on Form W-2).	Yes, unless the annual WI earnings are expected to be less than \$1,500 a year or the employee is covered by a reciprocal agreement.
Wyoming	Not applicable.	Not applicable.



## Resident and Non-Resident Withholding



Neither Connecticut nor Rhode Island have reciprocal agreements with any other state. RI requires withholding from non-residents that work within its borders. CT requires withholding from wages of its residents for services performed in another state (assuming the employer has nexus), allowing credit for the other state's withholding. Withholding should be taken first for RI. If employer has nexus in CT, and CT withholding on the same wages would be a higher amount, withhold the difference for CT. Report wages on W-2 for RI and CT.