Statement of
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Before the
U.S. House of Representatives
Committee on the Judiciary
Subcommittee on Regulatory Reform, Commercial and Antitrust Law

Hearing on H.R. 1129
The Mobile Workforce State Income Tax Simplification Act of 2013

Lori Brown, CPP, brings a broad range of experience to CACI International, Inc., where she is the Director, Disbursements. She has more than 20 years of experience in payroll including government contracting, payroll tax compliance, and systems conversions. She earned the Fundamental Payroll Certification (FPC) in 2001 and the Certified Payroll Professional (CPP) designation in 2002.

Ms. Brown has been an active member of the American Payroll Association (APA) since 2002. She currently serves nationally on the National Speakers Bureau, FPC Committee, Certification Advisory Group and Hotline Referral Committee. She has received Citations of Merit from the APA each year since 2005. She is also an active member of the Washington Area Metropolitan Chapter (WMAC-APA) and currently serves as Treasurer.

Since 2004, Ms. Brown has shared her knowledge with other payroll practitioners by teaching CPP/FPC exam preparation classes and payroll knowledge concepts. She has taught at George Mason University and Prince George's Community College, and currently teaches payroll courses for the American Payroll Association nationally.

The **American Payroll Association** (APA) is a nonprofit association representing payroll professionals. APA's members include more than 20,000 payroll professionals, most of whom perform payroll-processing duties for approximately 17,000 employers. Additionally, APA's 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 the administrative burden for government, employers, and individual workers/taxpayers.

Statement of Lori Brown, Certified Payroll Professional

My name is Lori Brown, and I'm speaking today on behalf of the American Payroll Association in favor of HR 1129, the Mobile Workforce State Income Tax Simplification Act.

The American Payroll Association is a nonprofit professional organization with more than 20,000 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 for another 1.5 million employers.

I have been a payroll professional for more than 20 years and have worked for several multistate employers. This environment has provided first-hand knowledge of the many challenges that employees and employers face in trying to manage their proper state and local income tax obligations.

Often when employees cross state borders for work, the administrative burdens on employers and employees increase exponentially. I would like to explain some of the difficulties involved, which should clarify why HR 1129 is so important to both business and workers. This is an issue that cuts across all demographics, from large to small employers, public and private sector, union and nonunion, nonprofit and for-profit, and all others.

Employees working in one state while living in another state

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 must 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.

Just as the United States taxes its citizens and residents on their worldwide income, so do the states by imposing a tax on their residents who earn income outside of 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 in their withholding requirements for residents who work elsewhere. Some want full withholding, some want withholding only if no withholding is being done for the state in which the services are performed, and some want full withholding but provide a credit for the withholding taken for the state in which the services are performed. Further complicating matters, in addition to the varying withholding rules, each state also has its own wage reporting requirements.

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

Temporary out-of-state work assignments create burdens on employers
Whenever an employer sends an employee to a worksite outside of the state in which the employee normally performs services, the employer is subject to additional burdensome requirements, such as registering for a withholding account and withholding tax. As a payroll professional, it is my duty to ensure that taxation is handled properly for the state in which the employee is working as well as the state in which the employee claims residency. Again, there is no consistent guidance on what to do in each particular case of an employee temporarily working in a new state because each state has its own set of tax laws and regulations applicable to nonresident workers. In addition, not all states impose these regulations in the same manner, and each pairing of states creates a new requirement.

For example, the tax obligations for a California resident working temporarily in New York are completely different than they are for the same employee working in other states, say Missouri or Georgia. And if a Pennsylvania resident were to work in New York, Missouri, or Georgia, the results would be different than they are for the California resident.

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

As a multistate employer, not only are we required to withhold taxes for each of the states in which the 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. Employers may move employees from state to state numerous times a year. This work is generally temporary in nature and is constantly changing in terms of where, when, and for how long an employee is assigned.

Often employers send employees to a new state or locality at a moment's notice, and we must begin withholding and accumulating tax for a new jurisdiction before we have even registered the business. Sometimes the tax has to be deposited with the jurisdiction under a status of "account applied for," which requires a reconciliation of wages and taxes once the withholding account has been established.

This process is very time consuming and utilizes much of a payroll department staff's resources for a small group of employees. In order to ensure timely deposits and filings for all of these states due to the temporary work situations, many employers outsource their tax filing to an outside payroll service provider. But the employer still has the burden of tracking the employees' work locations and time spent in each one. This is often a manual process. Of course, outsourcing the tax filing increases the cost of compliance.

Temporary out-of-state work assignments also burden employees
Our employees are also burdened. Each employee has to file a state personal income tax return for each state for which tax was deducted from their pay. For some employees, this can result in multiple state tax returns in addition to the one for their home state. The cost to prepare such tax filings increases with the number of states and complexity involved.

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 deducted even when someone spends only one week in that state out of the entire year. In such a situation, the employee has to file a state personal income tax return and will likely receive a full refund of the amount withheld.

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. This requires a great deal of time, effort, money, and burden with no positive return for the employer, the employees, or the states.

There is an added tax burden for residents of the nine states that do not impose state income taxes. As we know, the overall tax burdens of these state residents are comparable to those of residents in states that do impose state income taxes. As a resident of Virginia, I may be able to write off all or a portion of the taxes owed to another state against my home state tax obligation. A resident of a state that does not impose an income tax, such as Florida, Texas, Washington and others, does not have that ability and is, in effect, subject to double taxation.

HR 1129 Promotes Increased Compliance Through Decreased Burden
The Mobile Workforce Bill provides a 30-day safe harbor for employees and employers. When an employee travels into another state, he or she will not be subject to nonresident taxes for time periods of less than 30 days. The 30-day threshold is not continuous, so an employee might make a number of business trips to a state before tripping it. Once the threshold is tripped, the tax and withholding obligation reaches back to the first day worked in the state.

Due to the extreme complexity of the varying state tax regulations, many companies find complying with the laws nearly impossible. This may stem from ignorance of the law or regulations, or it may stem from a lack of adequate software systems, personnel, time, money, or other resources to meet the challenges of complying with the complex rules.

More employers will be able to 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.

It is worth noting that early versions of this bill, introduced in previous sessions of Congress, called for a 60-day safe harbor with no retroactivity. The current language has been negotiated in good faith to recognize the financial impact on states while also providing the necessary relief for businesses and workers.

The American Payroll Association and its 20,000 members strongly recommend that this legislation be considered and enacted so that the burden and cost of administering multistate taxes by American workers and American businesses can be reduced and we can ensure fair and consistent handling of this employment issue and the related taxes across the nation.

We look forward to watching this important legislation pass.

Sincerely,
Lori Brown, CPP

Appendix

The material in this handout is reprinted from the 2014 edition of *Payroll Issues for Multi-State Employers* with the permission of the American Payroll Association.

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/nonresident taxation policies (withholding Rule No. 3) must be examined.

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.

In 2012, the Virginia Tax Commissioner ruled that an out-of-state employer was required to withhold Virginia income tax from compensation paid to a sales employee who worked from a home office in Virginia because the employee's presence created nexus [Virginia Department of Taxation, Ruling No. 12-37, 3-30-12]. Thus, the presence of even one employee in a state may be enough to establish nexus for withholding tax purposes in some states.

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 can make your company subject to legal process in that state.

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.

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?

STATE DEFINITIONS OF A RESIDENT FOR INCOME TAX WITHHOLDING	
State	**Definition**
Alabama	A person who has 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. for 183 days or more during the year.
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	A person who is in Illinois for other than a temporary or transitory purpose, or who is domiciled in Illinois but absent for 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 who maintains a permanent place of abode in the state.

STATE DEFINITIONS OF A RESIDENT FOR INCOME TAX WITHHOLDING	
State	**Definition**
Kansas	A person domiciled in or who spends 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 who is domiciled, maintains a permanent place of abode, or spends more than 6 months of the year in the state.
Maine	A person who is domiciled, maintains a permanent place of abode, and spends 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 who is 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 who is domiciled or who has a residence in the state.
Missouri	A person who is 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.
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 outside of New Mexico permanently is not a resident for the period after the change of domicile.

STATE DEFINITIONS OF A RESIDENT FOR INCOME TAX WITHHOLDING	
State	**Definition**
New York	A resident is an individual: (A) who is domiciled in NYS, unless: (1) the person does not have a permanent place of abode in NYS, has a permanent abode elsewhere, and spends no more than 30 days of the year in NYS; or (2) is in a foreign country or countries for at least 450 out of 548 consecutive days (approximately 15 out of 18 months), the individual, spouse (unless legally separated), and minor children are not in NYS for more than 90 days during the 548-day period and during a period of less than 12 months, the individual is present in the state for a number of days not exceeding the number bearing the same ratio to 90 as the less-than-12-month period bears to 548 days; or (B) who is not domiciled in NYS but has a permanent place of abode in NYS for substantially all of the tax year (interpreted as more than 11 months) and spends in the aggregate more than 183 days of the tax year in NYS, unless the individual is in active military service.
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.
Washington	Not applicable.

STATE DEFINITIONS OF A RESIDENT FOR INCOME TAX WITHHOLDING	
State	**Definition**
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 (see p. A-1). In most cases, the employee will be required to submit a certificate of nonresidence 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 nonresidence 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.

Minnesota and Wisconsin fail to restore reciprocity for 2014. Minnesota and Wisconsin did not meet the October 1, 2013, deadline for an income tax reciprocity agreement to be in place for tax year 2014. Earlier in 2013, both states' tax departments completed benchmark studies in an effort to restore reciprocity, which ended on January 1, 2010. Unfortunately, the two states could not agree on an additional $6 million that Minnesota wanted Wisconsin to pay pay for tax credits. It remains to be seen whether restoring reciprocity will be a goal for 2015.

Reciprocal Coverage

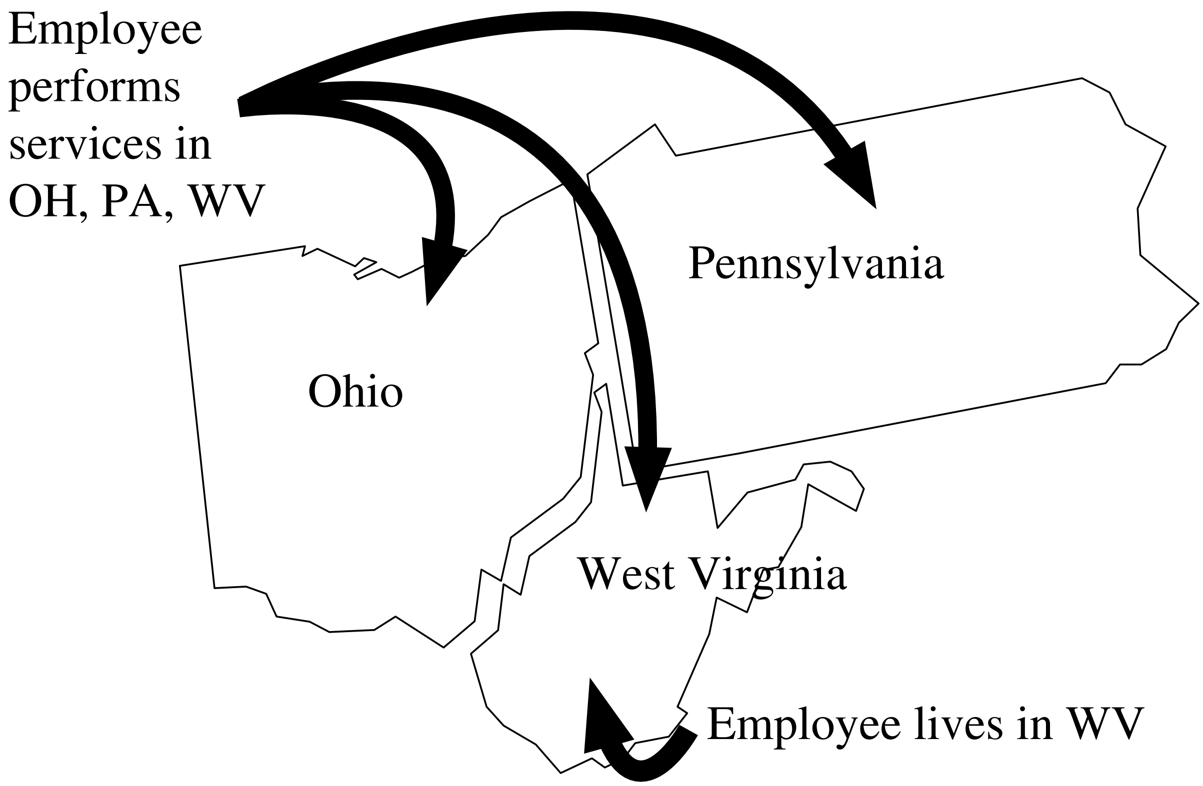
RECIPROCAL WITHHOLDING AGREEMENTS BETWEEN STATES	
State	**Reciprocal Agreements**
Alabama	None
Alaska	Not applicable.

RECIPROCAL WITHHOLDING AGREEMENTS BETWEEN STATES	
State	**Reciprocal Agreements**
Arizona	None, but a nonresident who performs services in Arizona for an Arizona employer may be exempt from withholding if: (1) the employee is a resident of California, District of Columbia, Indiana, Oregon, or Virginia; and (2) the employee can claim a personal income tax credit for income taxes paid to his/her state of residence. Arizona residents receive the same treatment from those states if they perform services there.
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 AR4EC(TX), *Texarkana Employee's Withholding Exemption Certificate.* Employer copy filed with Form AR-3Q-TEX.
California	None
Colorado	None
Connecticut	None
Delaware	None
Dist. of Col.	A reciprocal agreement is in effect with Maryland and Virginia. Nonresident employees of DC are not subject to DC withholding and must file Form D-4A, *Certificate of Nonresidence in the District of Columbia.*
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-5-NR, *Employee's Statement of Nonresidence in Illinois,* is filed with the employer; likewise, Illinois employees working in any of those states will not be taxed there. 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 (likewise, Indiana residents working in any of those states will be exempt there). They should complete Form WH-47, *Certificate of Residence.* 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, *Employee's Statement of Nonresidence in Iowa*, 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, *Certificate of Nonresidence*, is filed with the employer. Daily commuters between Kentucky and Virginia are provided reciprocal benefits.

RECIPROCAL WITHHOLDING AGREEMENTS BETWEEN STATES	
State	**Reciprocal Agreements**
Louisiana	None
Maine	None
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 MW507, *Employee's Maryland Withholding Exemption Certificate)* 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 and North Dakota are exempt from Minnesota withholding. Form MWR, *Reciprocity Exemption/Affidavit of Residency*, is required to certify residency. The reciprocal agreement with Wisconsin was terminated, effective 1-1-10.
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 MT-R, *Reciprocity Exemption From Withholding.*
Nebraska	None
Nevada	Not applicable.
New Hampshire	Not applicable.
New Jersey	Pennsylvania residents filling out a certificate of nonresidence (Form NJ-165, *Employee's Certificate of Nonresidence in New Jersey*) 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, *Reciprocity Exemption From Withholding for Qualifying Minnesota and Montana Residents Working in North Dakota,* should be filed with their employer annually.
Ohio	Ohio has reciprocal agreements with Indiana, Kentucky, Michigan, Pennsylvania, and West Virginia. Form IT 4NR, *Employee's Statement of Residency in a Reciprocity State*, must be filed with the employer to claim the exemption.
Oklahoma	None
Oregon	None

RECIPROCAL WITHHOLDING AGREEMENTS BETWEEN STATES	
State	**Reciprocal Agreements**
Pennsylvania	Pennsylvania has reciprocal agreements with Indiana, Maryland, New Jersey, Ohio, Virginia, and West Virginia. Form REV-419, *Employee's Nonwithholding Application Certificate,* 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 (this is a credit arrangement).
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 income tax of the resident state.
Washington	Not applicable.
West Virginia	Reciprocal agreements are in place with Kentucky, Maryland, Ohio, Pennsylvania, and Virginia. A *West Virginia Certificate of Nonresidence* (found on the back of Form WV/IT-104) must be filed with the employer.
Wisconsin	Illinois, Indiana, Kentucky, and Michigan residents working in 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. Form W-220, *Nonresident Employee's Withholding Reciprocity Declaration*, must be filed with the employer. The reciprocal agreement with Minnesota was terminated, effective 1-1-10. However, under a special withholding arrangement, employers of Wisconsin residents working in Minnesota are not required to withhold if: (1) the employee is a resident of Wisconsin when wages are earned in Minnesota; and (2) the same wages earned by the Wisconsin resident and subject to Minnesota withholding would also be subject to Wisconsin withholding. *Note:* Employees may have to make estimated payments if they expect to owe $200 or more in Wisconsin income taxes.
Wyoming	Not applicable.

Withholding Tax Reciprocity



Report all wages on Form W-2 (see p. A-1) for West Virginia and withhold West Virginia tax from all wages, as West Virginia has reciprocal agreements with Ohio and Pennsylvania. Employee must have submitted to the employer the Ohio and Pennsylvania forms that declare nonresidence in those states.

Withholding Rule No. 3: Resident/Nonresident 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 nonresidents 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.

Note: Effective for tax year 2009 and thereafter, the Military Spouses Residency Relief Act (Pub. L. 111-97) provides that a spouse of a servicemember retains residency in his or her home state for tax purposes if he or she moves to another state to be with the servicemember who is in the state due to military orders. Thus, income earned in the work state by the military spouse is not subject to taxation by the work state. However, the military spouse remains liable for income tax in the home state and may have to pay estimated taxes (see p. 4-56 for more information).

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, and may be required to withhold that state's income tax, in addition to the tax for the state in which the employee is working. For example, if the California resident works exclusively in Arizona for six months, and if the employer has nexus with California:

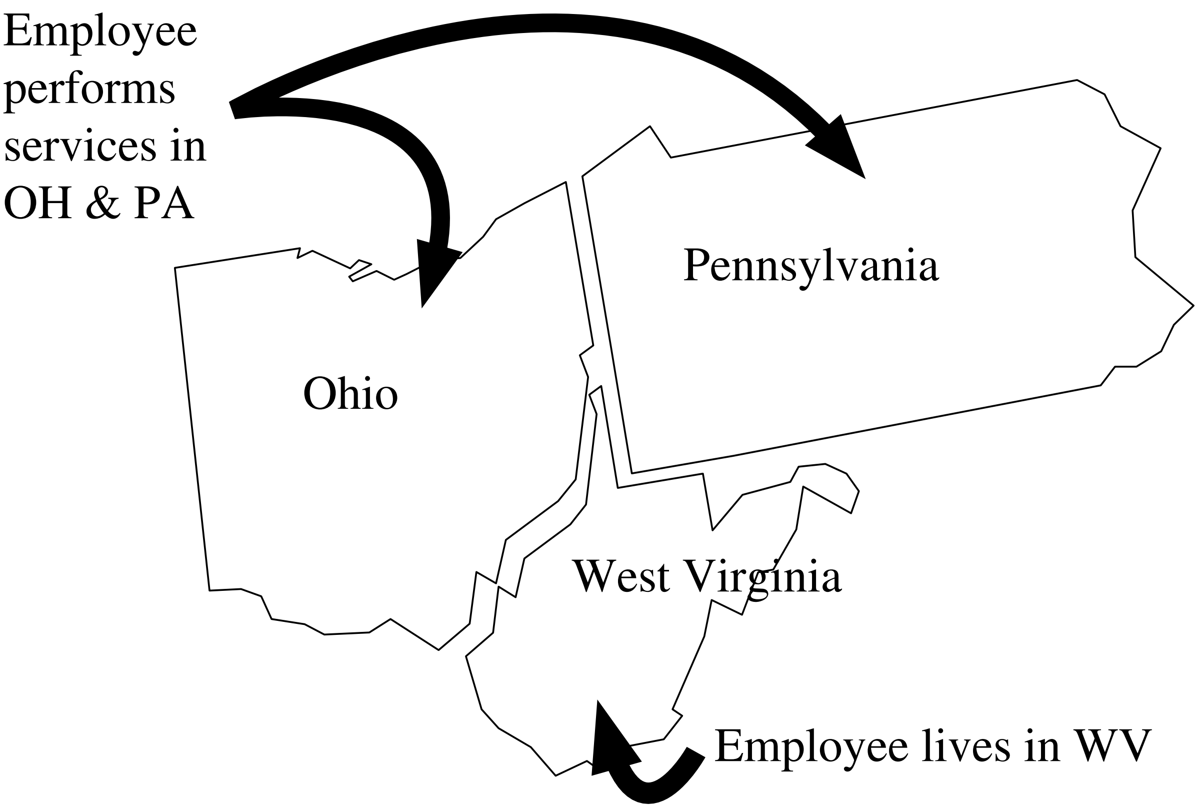
- Arizona withholding is required (the 60-day threshold is exceeded), and
- California withholding is required, with a credit for income tax withheld for the work-state (in this case, Arizona).

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.

No state income tax on retirement income of nonresidents. Pension plan payments may be subject to state income tax as well as federal income tax. One matter of controversy in this area has been state taxation of pension income received by nonresidents who at one time worked in the state. The APA, along with other organizations, recognized the nearly impossible recordkeeping and other administrative burdens such an approach would put on employers, and they worked to convince Congress to limit such taxation. These efforts proved fruitful when President Clinton signed Pub. L. No. 104-95, which prohibits states from imposing income tax on the retirement income of nonresidents.

Withholding Tax Reciprocity



Employer is not required to withhold any state income tax. Employee does not owe tax to Ohio or Pennsylvania, due to the reciprocal agreements those states have with the employee’s state of residence (West Virginia). Employee will owe tax to West Virginia, but the employer doesn’t have nexus with that state and is not required to withhold and remit that state’s tax.

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. 106-489, merchant mariners employed in interstate commerce are subject to the state and local income taxes of their state of residence.

Telecommuters

Generally, employers withhold income tax for the state in which an employee performs services. This means that a telecommuter who works from home, in a different state than the location of the office to which he or she reports, is subject to tax by the resident state.

The convenience of the employer test. New York's tax policy on nonresident employees has been criticized because it can lead to double taxation for telecommuters. Besides other factors, New York sources income based on the "convenience of the employer test" (see 20 NYCRR §132.18). A New York nonresident who performs services for his or her employer *both* inside and outside of New York may apportion New York income based on the number of days that services are actually performed within New York. The caveat is that the nonresident employee must prove that the work performed outside of New York is done so for the employer's necessity, and not the employee's convenience.

New York is not the only state to use the convenience of the employer test. Two other states have very similar convenience rules:

1. Nebraska – Neb. Adm. Code Title 316, Ch. 22, Reg. 22-003.01C(1)
2. Pennsylvania – 61 Pa. Code §109.8

However, New York has been criticized because of its aggressive enforcement. In New York, the convenience of the employer test is notoriously difficult to prove. In one case, a computer programmer who lived in Nashville, Tennessee, and worked at his employer's New York office only when needed (about 60 days a year) was not allowed to apportion his income. He unsuccessfully argued that the test should not be applied to someone who lives well beyond commuting range and whose principal place of business is outside of New York (*Huckaby v. New York State Div. of Tax Appeals,* 776 N.Y.S. 2d 125 (2004)). The court held that the employee was working at home for his own convenience. The employer did not require him to work at home in Nashville. In October 2005, the U.S. Supreme Court declined to hear the appeal of this case.

While many states tax their residents on their total income, no matter where earned, many of those states will allow a resident to take a credit on the personal income tax return for taxes paid to another state (the "work state") on earnings for services performed in that other state. The problem for a telecommuter is that the resident state is the "work state."

> ***Example:*** Sally, a Connecticut resident, works two days at home and three days in New York each week. Because it is her "home state," Connecticut will tax her on the full five days of income. New York will tax the income earned over the three days in New York, and it will tax the income earned over the two days in Connecticut unless Sally can prove that her work was performed at home for her employer's necessity and not for her own convenience (very hard to prove).
>
> And while a state generally gives a credit against its income tax for taxes paid to another state, Connecticut does not allow a credit for taxes paid to New York on earnings for work performed in Connecticut because it does not recognize New York's right to tax the income. In a nutshell, Sally is taxed by New York because she could have worked there and she is taxed by Connecticut because she actually worked there. Thus, on the income for services performed in Connecticut (two days a week), Sally is fully taxed twice.
>
> New Jersey, another border state of New York, allows a credit for taxes paid to New York in this sort of situation.

Revised application of convenience of the employer test. In May 2006, the New York State Department of Taxation and Finance issued a memorandum explaining its revised application of the convenience of the employer test to a nonresident or part-year resident employee who performs services for a New York employer at both a New York location and a home office located out-of-state [TSB-M-06(5)I].

Effective for tax years beginning on or after January 1, 2006, any normal workday spent at an out-of-state home office by an individual whose assigned or primary office is in New York will be treated as a day worked outside New York if the home office is a bona fide employer office. Any day spent at the home office that is not a normal workday will be considered a nonworking day. A "normal workday" means any day that the individual performed the usual duties of his or her job. Responding to occasional phone calls or emails, reading professional journals, or being available if needed does not constitute "performing the usual duties" of his of her job.

Previously, days worked at home by a nonresident were considered workdays in New York if the employee's assigned or primary work location was at an established office or other place of business of the employer in New York. If the employee's assigned or primary work location was at an established office or other bona fide place of business of the employer outside New York, then any normal workday worked at home was treated as a day worked outside New York.

Factors to determine if a home office is a bona fide employer office. The following factors must be used by an employee to determine if his or her home office constitutes a bona fide employer office. The factors are divided into three categories: the primary factor, secondary factors, and other factors. For an office to be considered a bona fide employer office it must satisfy either: (1) the primary factor; or (2) at least four of the secondary factors and three of the other factors.

Primary factor. The primary factor is that the home office contains or is near specialized facilities. If the employee's duties require the use of special facilities that cannot be made available at the employer's place of business, but those facilities are available at or near the employee's home, then the home office will meet this factor (e.g., an employee uses a test track near his or her home to test new cars). However, if the employee's duties require the use of specialized scientific equipment that is set up at or near the employee's home, but could physically be set up at the employer's place of business located in New York, then the home office would not meet this factor.

Secondary factors. There are six secondary factors:

1. The home office is a requirement or condition of employment. For example, a written employment contract provides that the employee must work from home to perform specific duties for the employer.
2. The employer has a bona fide business purpose for the employee's home office location. For example, an engineer is working on several projects in his or her home state and it is necessary that he or she have an office nearby in order to meet project deadlines.
3. The employee performs some of the core duties of his or her employment at the home office. For example, a stock broker executes stock purchases and sales from his or her home office (the core duties of a stock broker include the purchase and sale of stock).
4. The employee meets or deals with clients, patients, or customers on a regular and continuous basis at the home office. For example, the employer has clients located near the employee's home office and the employee must meet with the clients at the home office once a week to perform the duties of his or her job.
5. The employer does not provide the employee with designated office space or other regular work accommodations at one of its regular places of business. For example, an employer reduces office space to decrease rental expenses and allows an employee to work from home. If the employee must come to the office, he or she uses a "visitor's" cubicle, conference room, or other available space that is also used by other employees.
6. Employer reimbursement of expenses for the home office. The employer must reimburse the employee for substantially all (80% or more) of the expenses (e.g., utility expenses, insurance) related to the home office, or must pay the employee a fair rental value for the home office space used and furnish or reimburse the employee for substantially all (80% or more) of the supplies and equipment used by the employee.

Other factors. There are 10 other factors:

1. The employer maintains a separate telephone line and listing for the home office.
2. The employee's home office address and phone number are listed on the business letterhead and/or business cards of the employer.
3. The employee uses a specific area of the home exclusively to conduct the business of the employer that is separate from the living area.
4. The employer's business is selling products at wholesale or retail and the employee keeps an inventory of the products or product samples in the home office for use in the employer's business.
5. Business records of the employer are stored at the employee's home office.
6. The home office location has a sign indicating a place of business of the employer.
7. Advertising for the employer shows the employee's home office as one of the employer's places of business.
8. The home office is covered by a business insurance policy or by a business rider to the employee's homeowner's insurance policy.

9. The employee is entitled to and actually claims a deduction for home office expenses for federal income tax purposes.
10. The employee is not an officer of the company.

WITHHOLDING ON RESIDENTS AND NONRESIDENTS		
State	**Residents: Withholding Required on Services Performed Out-of-State (and W-2 Wage Reporting Requirement), If Nexus**	**Nonresidents: Withholding Required on Services Performed In-State**
Alabama	Yes (report wages), unless withholding is taken for the state where services are performed (do not report wages).	Yes
Arizona	No, but the employer may withhold for AZ if the employee requests it 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.
Arkansas	Yes (report wages), unless withholding is taken for the state where services are performed (do not report wages).	Yes, but see reciprocity.
California	Yes, allowing a credit for withholding taken for the state where services are performed. Report wages on Form W-2 and quarterly Form DE 9C.	Yes. 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. Report all PIT wages and PIT withheld on Form DE 9C.
Colorado	Yes (report wages), unless withholding is taken for the state where services are performed (do not report wages).	Yes

WITHHOLDING ON RESIDENTS AND NONRESIDENTS		
State	**Residents: Withholding Required on Services Performed Out-of-State (and W-2 Wage Reporting Requirement), If Nexus**	**Nonresidents: Withholding Required on Services Performed In-State**
Connecticut	Yes, allowing a credit for withholding taken for the state where services are performed (report wages).	Yes. *Note:* Withholding is not required for nonresidents assigned to a primary work location outside of CT if they work in CT for 14 or fewer days in a calendar year. Any part of a day spent performing services in CT counts as a full day. When a nonresident employee, who is reasonably expected to work 14 or fewer days in CT in a calendar year, actually works more than 14 days in CT, withhold tax on wages paid after 14th day. The 14-day rule does not apply to payments made to nonresident athletes and entertainers performing services in CT. Report wages paid to a nonresident employee who works 14 or fewer days during a calendar year in CT on Form CT-941 and Form W-2 in box 16 (wages are taxable to employee).
Delaware	No (report wages). However, the employee may elect to have DE tax withheld. If so, allow a credit for withholding taken for the state where services are performed.	Yes *Note:* Nonresident employees of an out-of-state employer who perform emergency-related work during a declared disaster period are not subject to withholding.
Dist. of Col.	Yes (report wages).	No, provided the employee submits Form D-4-A, *Certificate of Non-Residence in the District of Columbia,* to the employer.
Georgia	Yes (report wages), unless withholding is taken for the state where services are performed (report wages).	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 if the remuneration for services in GA is more than $5,000.

WITHHOLDING ON RESIDENTS AND NONRESIDENTS		
State	**Residents: Withholding Required on Services Performed Out-of-State (and W-2 Wage Reporting Requirement), If Nexus**	**Nonresidents: Withholding Required on Services Performed In-State**
Hawaii	Yes, if either (a) the regular place of employment is in HI, or (b) wages are paid from an office within HI (do not report wages).	Yes, unless these four conditions are met: (1) the employee will perform services in HI for no 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 (report wages), unless withholding is taken for the state where services are performed (report wages).	Yes, if the employee earns $1,000 or more in the year in ID and is subject to federal income tax withholding (report all ID wages on Form W-2 even if no ID tax is withheld).
Illinois	Yes, if any of the following conditions are met (report wages): (a) the employee's services are primarily performed in IL (out-of-state services are incidental to services in IL); (b) the services are not primarily performed in any one state, but some services are performed in IL, and either the base of operations is in IL, or, if there is no base of operations, the place from which the services are directed or controlled is in IL; or (c) the services are not primarily performed in any one state but some services are performed in IL, and the base of operations or the place from which the services are directed or controlled is not in any state in which the employee performs services. No wage reporting required if resident works 100% in another state that has withholding, works in another state that does not have withholding (i.e., no state income tax), or works in another state where the employee is not subject to withholding (for whatever reason).	Residents of states with which IL has reciprocity are not subject. Otherwise, IL income tax must be withheld on all income for services performed within and outside IL if either of the following conditions are met: (a) the employee's services are primarily performed in IL (out-of-state services are incidental to services in IL); or (b) the services are not primarily performed in any one state, but some services are performed in IL, and either the base of operations is in IL, or, if there is no base of operations, the place from which the services are directed or controlled is in IL.

WITHHOLDING ON RESIDENTS AND NONRESIDENTS		
State	**Residents: Withholding Required on Services Performed Out-of-State (and W-2 Wage Reporting Requirement), If Nexus**	**Nonresidents: Withholding Required on Services Performed In-State**
Indiana	Yes, withhold IN state and county income taxes if IN liability exceeds taxes withheld in work state (report wages). If work state does not levy a withholding tax on wages, withhold IN state and county taxes (report wages).	Yes, but see reciprocity.
Iowa	Yes, withhold for the state in which the wages were earned, except Illinois (report all wages on Form W-2 for the work state(s)).	Yes, but see reciprocity.
Kansas	Yes, allowing a credit for withholding taken for the state where services are performed (do not report wages earned out-of-state, only KS wages).	Yes. Determine withholding using the apportionment formula found on Form K-4C, *Kansas Nonresident Employee Certificate for Allocation of Withholding Tax,* submitted by the nonresident employee.
Kentucky	Yes (report wages).	Yes, but see reciprocity.
Louisiana	Yes (report wages), unless withholding is taken for the state where the services are performed (do not report wages).	Yes. A nonresident who works partly within and partly outside LA must file Form R-1300 (L-4), *Employee's Withholding Exemption Certificate,* with the employer to be exempt from LA withholding on wages paid for services performed outside LA.
Maine	Yes (report wages).	Yes, if the nonresident works in ME for more than 12 days during the year and earns more than $3,000 in gross income during the year from all sources in Maine. However, the performance of certain personal services for 24 days during a year does not count toward the 12-day threshold (employment-related training or education, certain management functions, research and development, and new investment).

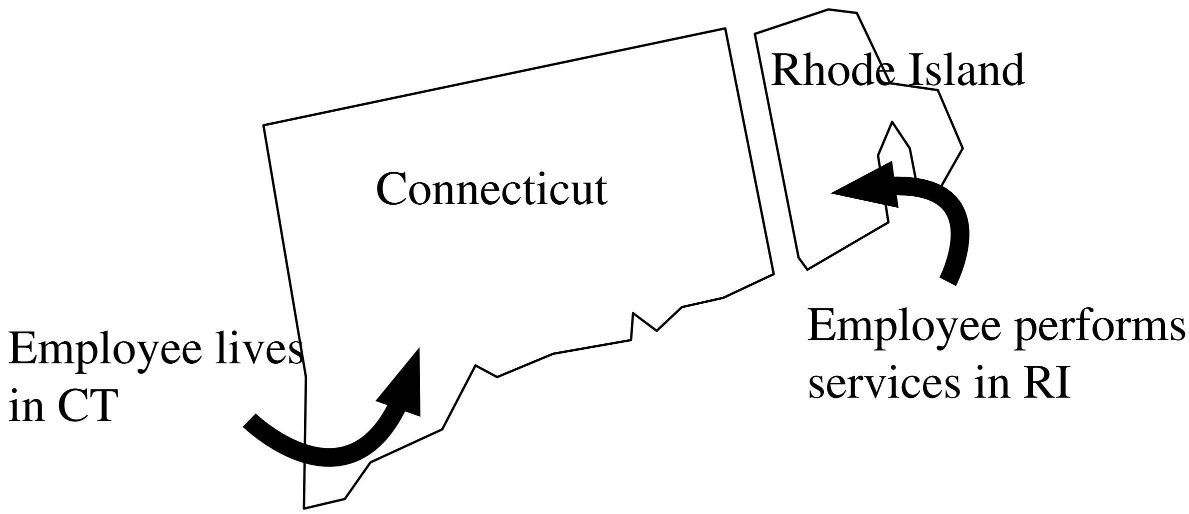
WITHHOLDING ON RESIDENTS AND NONRESIDENTS		
State	**Residents: Withholding Required on Services Performed Out-of-State (and W-2 Wage Reporting Requirement), If Nexus**	**Nonresidents: Withholding Required on Services Performed In-State**
Maryland	Yes (report wages).	Yes, but see reciprocity. *Note:* Nonresident employees of an out-of-state employer who perform disaster or emergency-related work during a declared disaster period are not subject to state or county income tax withholding. The employer must provide a statement to the Comptroller's Office.
Massachusetts	Yes, allowing a credit for withholding taken for the state where services are performed (report wages on Form W-2 but do not send it to the state; also report all wages on quarterly Form WR-1).	Yes
Michigan	Yes (report wages).	Yes, but see reciprocity.
Minnesota	Yes (report wages), provided federal income tax withholding from the employee's wages is required.	Yes, but see reciprocity.
Mississippi	Yes (report wages), unless withholding is taken for the state where services are performed (do not report wages).	Yes. Wages for services performed by a nonresident outside of MS are also subject to MS withholding if the nonresident's principal place of employment is within MS and he/she only occasionally works outside of MS, unless withholding is required by the other state in which the services are performed.
Missouri	Yes (report wages), unless withholding is taken for the state where services are performed (report wages).	Yes. A nonresident who works partly within and partly outside MO must file Form MO W-4A, *Certificate of Nonresidence/Allocation of Withholding Tax,* with the employer to exempt from MO withholding wages paid for services performed outside MO.
Montana	Yes (report wages).	Yes, but see reciprocity.

WITHHOLDING ON RESIDENTS AND NONRESIDENTS		
State	**Residents: Withholding Required on Services Performed Out-of-State (and W-2 Wage Reporting Requirement), If Nexus**	**Nonresidents: Withholding Required on Services Performed In-State**
Nebraska	Yes, allowing a credit for withholding taken for the state where services are performed (report wages).	Yes. A nonresident who works partly within and partly outside NE must file Form 9N, *Employee Certificate for Allocation of Withholding Tax,* with the employer to designate the approximate percentage of the wages subject to NE withholding. However, this does not determine the wage amount that must be included on the Form W-2 as NE wages.
New Jersey	Yes (report wages), unless withholding required by state where services are preformed equals or exceeds withholding required for NJ. However, if NJ withholding is greater, the employer must withhold the difference.	Yes, but see reciprocity.
New Mexico	Yes (report wages).	Yes, if the nonresident works in NM for 16 days or more in the calendar year.
New York	Yes, allowing a credit for withholding taken for the state and/or locality where services are performed (report wages). 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 all wages on 4th quarter Form NYS-45. NYS wages on Form W-2 must equal federal (box 1) wages. The employee will allocate his/her NYS wages when filing the NYS personal income tax return.	Yes. If a nonresident works only a short period of time in NYS and it is reasonably expected that the total wages for the services performed there will not exceed the amount of the employee's personal exemptions, the employer need not withhold NYS personal income tax until the aggregate amount paid to the employee exceeds the amount of the employee's personal exemptions (20 NYCRR 171.6(b)(4)). *Note:* Withholding is not required for nonresidents assigned to a primary work location outside of NYS if they work in NYS 14 or fewer days in a calendar year; wage reporting still required. Any part of a day spent performing services in NYS counts as a full day, but days spent in NYS for job-related training do not count as days. The 14-day rule does not apply to payments made to nonresidents who are traveling salespersons, public speakers, athletes, and entertainers, or to payments of deferred compensation or nonstatutory stock options.

WITHHOLDING ON RESIDENTS AND NONRESIDENTS		
State	**Residents: Withholding Required on Services Performed Out-of-State (and W-2 Wage Reporting Requirement), If Nexus**	**Nonresidents: Withholding Required on Services Performed In-State**
New York *(cont.)*		NYS state wages on Form W-2 must equal federal (box 1) wages. The employee will allocate his/her NYS wages when filing the NYS personal income tax return.
North Carolina	Yes (report wages), unless withholding is taken for the state where services are performed (do not report wages).	Yes
North Dakota	Yes (report wages), provided the employer's main place of business is in ND and the wages are subject to federal income tax withholding. However, if withholding is taken for the state where services are performed, do not withhold (do not report wages).	No, if nonresident works less than 21 days during the tax year in ND and resident state does not impose an income tax or provide substantially similar exclusion (does not apply to athletes, entertainers, persons of prominence, construction service employees, and key employees). Also, see reciprocity.
Ohio	Yes (report wages).	Yes, but see reciprocity.
Oklahoma	Yes (report wages).	Yes, if the nonresident earns $300 or more in a calendar quarter.
Oregon	Yes (report wages), unless withholding is taken for the state where services are performed (report wages).	Yes, if the employee's OR earnings for the year will equal or exceed the OR standard deduction amount for his/her filing status.
Pennsylvania	Yes (report wages), unless withholding is taken for the state where services are performed (report wages).	Yes, but see reciprocity.
Rhode Island	No	Yes
South Carolina	Yes (report wages), unless withholding is taken for the state where services are performed (report wages).	Yes, if the employee is paid $800 or more per year. *Note:* Nonresident employees of an out-of-state employer who perform disaster or emergency-related work during a declared disaster period that occurs during fiscal year 2013-2014 (7-1-13 to 6-30-14) are not subject to withholding.
Utah	Yes (do not report wages).	Yes, unless the employer receives an exemption from the Tax Commission (generally granted to employers doing business in the state for 60 days or less in the calendar year).

WITHHOLDING ON RESIDENTS AND NONRESIDENTS		
State	**Residents: Withholding Required on Services Performed Out-of-State (and W-2 Wage Reporting Requirement), If Nexus**	**Nonresidents: Withholding Required on Services Performed In-State**
Vermont	Yes, allowing a credit for withholding taken for the state where services are performed (do not report wages).	Yes
Virginia	Yes, allowing a credit for withholding taken for the state where services are performed (employee must submit Form VA-4B, *Virginia Employee's Credit for Income Taxes Paid to Another State,* to the employer).	Yes, but see reciprocity.
West Virginia	Yes (report wages).	Yes, but see reciprocity. If the nonresident works entirely within WV, withhold from all wages paid to the employee.
Wisconsin	Yes (report wages).	Yes, if the annual WI earnings are expected to be $1,500 or more.

Resident and Nonresident Withholding



Neither Connecticut nor Rhode Island have reciprocal agreements with any other state. RI requires withholding from nonresidents who 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 the 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 Form W-2 (see p. A-1) for RI and CT.