2022 employment tax year in review

December 8, 2022

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Course description and learning objectives

Course description

The panelists will discuss the unique challenges raised by hybrid and telework arrangements and how the temporary state COVID-19 income tax provisions complicated this process. They will also cover a variety of year-end employment tax concerns, including 2023 federal and state rates and limits, the employee retention tax credit, IRS form changes, state developments, year-end reconciliation steps and employee notices.

Learning objectives

- Identify the qualifications for various employment tax credits
- Recognize the temporary federal employment tax provisions for COVID-19
- Identify the methods for accurately determining state income tax and unemployment insurance for remote and hybrid workers
- Identify state income tax and unemployment insurance trends in 2022
- Recognize various year-end reporting and other considerations

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Today's agenda

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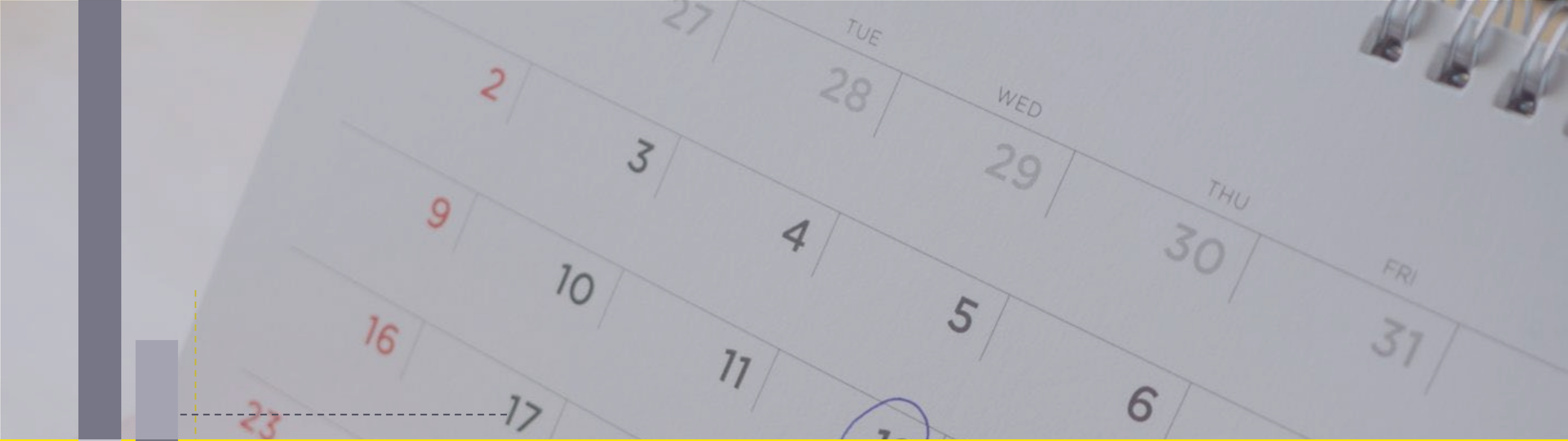

2023 federal and state rates and limits

2022 and 2023 federal employment tax limits

Category	Measure	2023 limit	2022 limit	Compared to 2022
Social Security wage base	Year	$160,200	$147,000	▲
Salary reduction to qualified retirement plan (e.g., 401(k))	Year	$22,500	$20,500	▲
Qualified parking	Month	$300	$280	▲
Commuter highway vehicle/transit pass	Month	$300	$280	▲
Adoption assistance	Per adoption	$15,950	$14,890	▲
Health flexible spending account (FSA) employee pretax contribution	Year	$3,050	$2,850	▲
Business cents per mile	Mile	Pending	Jan. 1, 2022: $0.585; July 1, 2022: $0.625	
Relocation cents per mile	Mile	Pending	Jan. 1, 2022: $0.180; July 1, 2022, $0.220	
Federal unemployment insurance wage base	Year	$7,000	$7,000	—

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Health savings account limits for 2022 and 2023

Limit type	2023	2022
Contribution*		
Self	$3,850	$3,650
Family	$7,750	$7,300
Out-of-pocket		
Self	$7,500	$7,050
Family	$15,000	$14,100
High-deductible health plan (HDHP)		
Self	$1,500	$1,400
Family	$3,800	$2,800

Keep in mind

The combined total of annual employer contributions plus employee pretax contributions must be reported on Form W-2, box 12, code W.

Errors in box 12, code W create tax return filing issues for employees.

* An additional contribution of $1,000 is permitted for individuals aged 55 and older. Those enrolled in Medicare are not eligible to participate. For plan years beginning in 2023, the maximum amount that may be made newly available for the plan year for an excepted Health Reimbursement Arrangement (HRA) under Reg. Section 54.9831-1(c)(3)(viii) is $1,950.

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Information reporting penalties (Forms W-2 and 1099)

Section 6721: Failure to timely file an accurate information return with IRS/SSA (for returns required to be filed in 2024)				
Filed/corrected on or after	On or before	Penalty	Maximum	Maximum small employer
1/1	1/31	$0	N/A	N/A
2/1	2/28	$60	$630,500	$220,500
3/1	8/1	$120	$1,891,500	$630,500
8/1		$310	$3,783,000	$1,261,000
	Intentional disregard	$630	No limit	No limit
Section 6722: Failure to furnish correct payee statements (for statements required to be furnished in 2024)				
Filed/corrected on or after	On or before	Penalty	Maximum	Maximum small employer
1/1	1/31	$0	N/A	N/A
2/1	2/28	$60	$630,500	$220,500
3/1	8/1	$120	$1,891,500	$630,500
8/1		$310	$3,783,000	$1,261,000
	Intentional disregard	$630	No limit	No limit

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State disability and family leave insurance contributions for 2023

State disability and family and medical insurance contribution rates for 2023			
State/jurisdiction	**Employee contribution**	**Employer contribution**	**Taxable wage limit if applicable**
California			
Disability	0.9%	None	$153,164, maximum contribution is $1,378.48 (note that the wage cap will be removed starting in 2024)
Paid family medical leave insurance	Included in disability	N/A	Included in disability
Connecticut			
Disability	None	None	None
Paid family medical leave insurance	0.5%	None	$160,200 (2023 Social Security wage limit)
Colorado			
Disability	None	None	None
Paid family medical leave insurance	50% of 0.9% (effective January 1, 2023, for employers of 10 or more, employees pay 50%; if fewer than 10 employees, employees pay 100%)	50% of 0.9% (effective January 1, 2023, employers of 10 or more employees pay 50%; if fewer than 10 employees, employers pay 0%)	$160,200 (2023 Social Security wage limit)
Delaware			
Disability	None	None	
New! Paid family medical leave insurance Contributions start in 2025	Employers may deduct 50% of employer contribution	Medical: 0.4%; Family leave: 0.8%; Parental leave: 0.32% (employers with 10 to 24 employees are subject only to parental leave)	Up to the Social Security wage limit
District of Columbia			
Disability	None	None	None
Paid family medical leave insurance	None	0.62%	None, payroll tax is on total wages

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State disability and family leave insurance contributions for 2023, *continued*

State disability and family and medical insurance contribution rates for 2023			
State/jurisdiction	**Employee contribution**	**Employer contribution**	**Taxable wage limit if applicable**
Hawaii			
Disability	50% of cost but not more than 0.5% of covered weekly wages up to a maximum. The maximum weekly contribution is $6.59	Difference between cost and worker's contribution	For 2023, $1,318.48 (weekly)
Paid family medical leave insurance	None	None	None
Maryland			
Disability	None	None	None
New! Paid family medical leave insurance Effective October 1, 2023	To be determined	To be determined	Social Security wage limit
Massachusetts			
Disability	None	None	None
Paid family medical leave insurance	0.63% if 25 or more employees and .318% if fewer than 25 employees (employees pay 100% of family leave portion. If employer of 25 or more employees, 40% of medical insurance portion; otherwise, employee pays 100%)	For employers of 25 or more employees, 60% of medical insurance portion of rate; otherwise, employees pay 100%	$160,200 (2023 Social Security wagelimit)
New Hampshire			
Disability	None	None	None
New! Paid family medical leave insurance	Effective January 1, 2023, employees may opt into the state's Granite State Paid Family Leave Fund (FMLI)	Employers that choose to participate in the FMLI program will be entitled to a tax credit, allowed against FMLI premiums due, of 50% of the premium that the employer paid for FMLI coverage for the tax period at issue	N/A

State disability and family leave insurance contributions for 2023, *continued*

State disability and family and medical insurance contribution rates for 2023			
State/jurisdiction	**Employee contribution**	**Employer contribution**	**Taxable wage limit if applicable**
New Jersey			
Disability	None	New employers pay 0.5% of taxable wages if in state plan; otherwise, experience rating applies. For other employers, experience rates range from 0.1% to 0.75%	$156,800 ($41,100 for employers)
Paid family medical leave insurance	0.06%	None	$156,800
New York			
Disability	0.5% up to: $0.14 daily $0.60 weekly $1.20 biweekly $1.30 semi-monthly $2.60 monthly	Balance of costs over employee contributions necessary to provide benefits	None
Paid family medical leave insurance	0.455% (maximum of $399.43 per year)	None	$1,688.19 (weekly)
Oregon			
Disability	None	None	None
New! Paid family medical leave insurance	60% of 1.0% (effective January 1, 2023, for those whose employers have 25 or more employees, employees pay 60%; if fewer than 25 employees, employees pay 100%)	40% of 1.0% (effective January 1, 2023, employers of 25 or more employees pay 40%; if fewer than 25 employees, employers may pay 0%)	$132,900

State disability and family leave insurance contributions for 2023, *continued*

State disability and family and medical insurance contribution rates for 2023			
State/jurisdiction	**Employee contribution**	**Employer contribution**	**Taxable wage limit if applicable**
Puerto Rico			
Disability	0.3%	0.3%	$9,000
Paid family medical leave insurance	None	None	None
Rhode Island			
Disability	1.1%	None	$84,000
Paid family medical leave insurance	Included in disability	N/A	Included in disability
Washington			
Disability	None	None	None
Paid family medical leave insurance	72.76% of 0.8% (for those whose employer has fewer than 50 employees, employees pay 100% of the premium)	27.24% of 0. 8% (if employer has 50 or more employees, otherwise the employee pays 100% of the premium)	$160,200 (Social Security wage limit)
New! Long term care insurance Contributions start July 1, 2023	0.58% of gross wages		None

Federal taxation of disability pay and paid family and medical leave benefits

Read more in our special report

Disability benefits for the employee's illness/injury

Whether paid by a state fund, insurance company or employer plan

First six months

To the extent the employer paid for the insurance:

- Subject to FICA and FUTA
- Subject to federal income tax (FIT)

After first six months

To the extent the employer paid for the insurance:

- Subject to FIT

Form W-2

Read more in our special report

Disability benefits for the illness/injury of a family member

Paid by state fund

Subject to FIT

Form 1099-G

Paid by private insurance or employer plan

Subject to FIT, FITW, FICA and FUTA

Form W-2

Polling question

How did you hear about this webcast?

a. Social media

b. EY newsletter/email/website

c. Friend/colleague

d. Other

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Form W-2 reporting considerations

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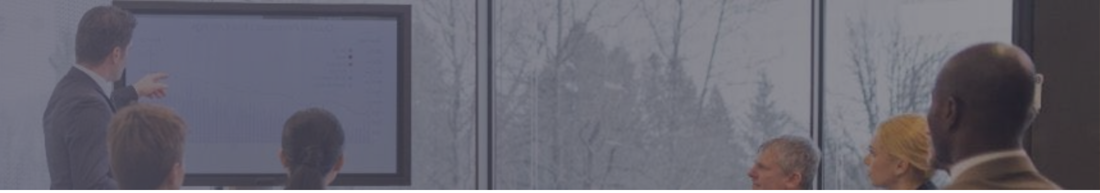
Form W-2 reporting developments



Truncation of the SSN on Form W-2

- The IRS issued final regulations that give employers the option of truncating the SSN on copies of Forms W-2 and W-2c provided to employees effective with information statements required to be furnished after December 31, 2020. (T.D. 9861; REG-105004-16.)
- Truncation is allowed only on forms provided to employees and not on copies filed with the IRS or SSA.
- The formatting of the truncated SSN is shown in this example:
  XXX–XX–1234 or ***–**–1234
- Truncation of the SSN is not required on statements that insurance companies are required to provide to employers (due by January 15) detailing third-party sick payments for the prior year.
- Some states may still require the full SSN to be furnished on state copies of Forms W-2 provided to employees.

Form W-2 reporting developments, *continued*

Threshold for filing Forms W-2/1099 electronically

- The Taxpayer First Act (*Pub. Law No. 116-25*) lowers the threshold for the mandatory electronic filing of information returns (Forms W-2 and the 1099 series).
- Under temporary IRS regulations, the threshold for mandatory electronic filing of Forms W-2, W-2c and 1099, currently required when there are 250 or more forms, decreases to 100 forms effective for tax year 2021 (filed in 2022), and to 10 for tax years after 2021. (*SSA website*.)
- A waiver from this lower electronic filing threshold applies to areas without internet access.
- For larger employers, the lower electronic filing thresholds could affect the way Forms W-2c are filed. For instance, currently up to 250 Forms W-2c can be filed on paper.
- Some state electronic filing thresholds follow the federal rules. (*See Table 4 of our 2022 payroll year-end checklist.*)

Form W-2 reporting developments, *continued*

Form W-2 for qualified leave wages

- In Notice 2021-53, the IRS instructs employers that claimed the COVID-19 paid leave tax credit to report qualified leave wages on Form W-2 in boxes 1, 3 (up to the Social Security wage limit), 5 and 14.
    - In other words, the requirement does not apply to employers with more than 500 employees, as the COVID-19 paid leave tax credit is available only to small employers.
- In lieu of box 14, employers may provide a separate statement to employees that includes the instructions contained in model language provided the IRS.
- See EY Tax Alert 2021-1669 for more information.

Form W-2 reporting developments, *continued*

Reporting of nonemployee compensation (Form 1099-NEC)

- Effective with tax year 2020 (filed in 2021) the IRS requires Form 1099-NEC to be used to report nonemployee compensation.
- Form 1099-NEC must be furnished to payees and filed with the IRS by January 31.
- Effective for tax year 2021, the Form 1099-NEC is included in the federal/state combined reporting program.
- Form 1099-NEC resolves the issue of the differing filing due dates for wages reported on Forms W-2 and the due date for Forms 1099-MISC for other than nonemployee compensation.
    - Through tax year 2019, Forms 1099-MISC generally had to be filed by March 31 (February 28 if filed on paper); however, Forms 1099-MISC reporting nonemployee compensation had to be filed by January 31, the same due date that applies to Forms W-2.
- Forms 1099-MISC continues to be used to report wages subject to federal income tax paid after the employee's death.

A Form W-2c is not required for de minimis errors, but only if the employee requests the waiver.

Employee waiver applies to de minimis errors

- Dollar error no more than $100
- Withholding tax error no more than $25

Employee must provide consent to employer that includes:

- Clear statement of employee's election
- Employee name, address, SSN
- If desired, tax year the election applies
- If desired, type of statement (e.g., W-2)
- Consent methods can be phone, mail, email, online (but online cannot be the only method available)

Other requirements:

- Form W-2c is required within 30 days of employee revocation of consent
  - Employers may issue Form W-2c even if employee provided a waiver consent
- Employee waiver consent must be retained for the statute of limitations

For more information see Notice 2017-09

EY

Polling question

Does a lower Form W-2 electronic filing threshold create new year-end challenges for you?

a. Yes for Forms W-2

b. Yes for Forms W-2c

c. No for Forms W-2

d. No for Forms W-2c

e. Don't know

f. Not applicable (EY, faculty, other)

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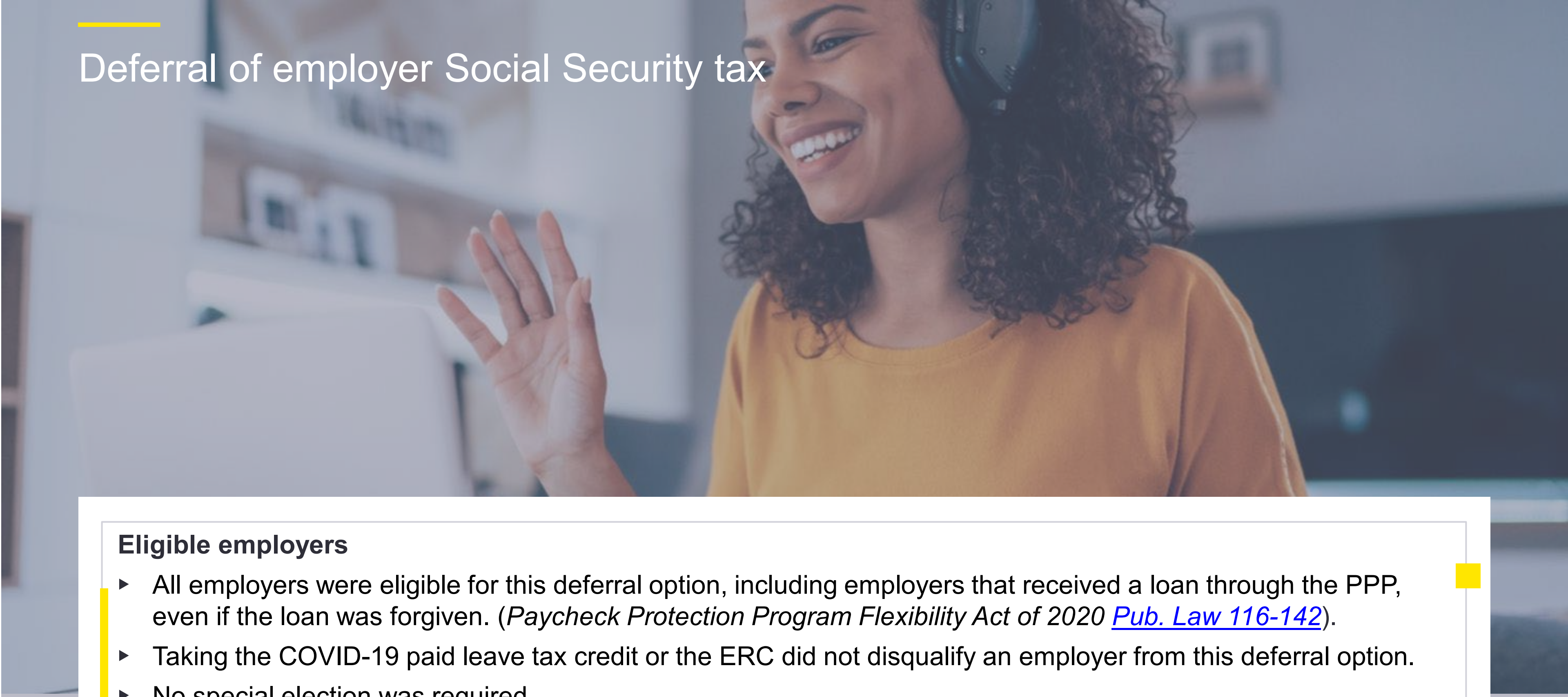
Temporary federal COVID-19 provisions

Deferral of employer Social Security tax



Eligible employers

- All employers were eligible for this deferral option, including employers that received a loan through the PPP, even if the loan was forgiven. (*Paycheck Protection Program Flexibility Act of 2020* Pub. Law 116-142).
- Taking the COVID-19 paid leave tax credit or the ERC did not disqualify an employer from this deferral option.
- No special election was required.

Deferral overview

- The deferral option (available for the period March 27, 2020, through December 31, 2020) applied to the employer-portion of Social Security tax (6.2% of wages up to $137,700 for 2020) under IRC Section 3111(a). For employers covered by the RRTA, the taxes imposed under IRC Section 3221(a) are attributable to the rate in effect under IRC Section 3111(a) (collectively known as the “employer’s share of Social Security tax”).
- 50% of the deferral amount must be repaid by January 3, 2022 (for the payment due December 31, 2021), with the remaining repayment due by January 3, 2023 (for the payment due December 31, 2022).

Deferral of employer Social Security tax: installment payment calculations

Calculation of installment payments of deferred Social Security tax

- In November 2021, the IRS began sending informational CP256V notices to employers that chose to defer the employer portion of 2021 Social Security taxes.
- It was previously unclear whether the IRS would treat the tax to be repaid in the first installment as 50% of the total tax that could have been deferred for all of 2020 (that is, an annualized approach), or instead, 50% of the tax that could have been deferred for each quarter.
- Given the significant penalty that could be imposed, employers should consider reviewing the tax shown on the CP256V notice for each quarter.
  - If the tax shown is greater than the expected repayment liability, it will be important to understand the reason for the discrepancy, which may entail confirming that the calculation employed a quarterly approach and reviewing IRS transcripts to understand whether the tax shown on the notice reflects recent payments.
- If the deferral was not claimed in the quarter that the employer portion of the Social Security tax liability was incurred, an employer may not later claim the deferral on Form 941-X.

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Deferral of employer Social Security tax: example

Example

▶ Under an annualized approach, an employer with $4,030,000 in deferrable Social Security tax liability would owe $1,705,000 by January 3, 2022; under a quarterly approach, the employer would owe a different amount depending on what was deferrable and was actually deferred in each quarter, as illustrated in this table:

	Q1	Q2	Q3	Q4	Quarterly	Annualized
Wages	$5,000,000	$20,000,000	$20,000,000	$20,000,000	$65,000,000	$65,000,000
OASDI liability	$310,000	$1,240,000	$1,240,000	$1,240,000	$4,030,000	$4,030,000
OASDI paid	$310,000	$0	$0	$0	$310,000	$310,000
OASDI deferred	$0	$1,240,000	$1,240,000	$1,240,000	$3,720,000	$3,720,000
Due Jan. 3, 2022	$0	$620,000	$620,000	$620,000	$1,860,000	$1,705,000
Due Jan. 3, 2023	$0	$620,000	$620,000	$620,000	$1,860,000	$2,015,000

▶ As illustrated in the example, employers might consider using the quarterly approach. Thus, in the example, if the employer used the annualized approach instead and paid only $1,705,000 by the January 3, 2022, deadline, it seems the entire $4,030,000 that was deferred from 2020 would be treated as ineligible for deferral and a $403,000 failure-to-deposit penalty under IRC Section 6656 (10% of $4,030,000) could be asserted, even though the employer's payment fell short of the tax due under the quarterly approach by only $155,000.

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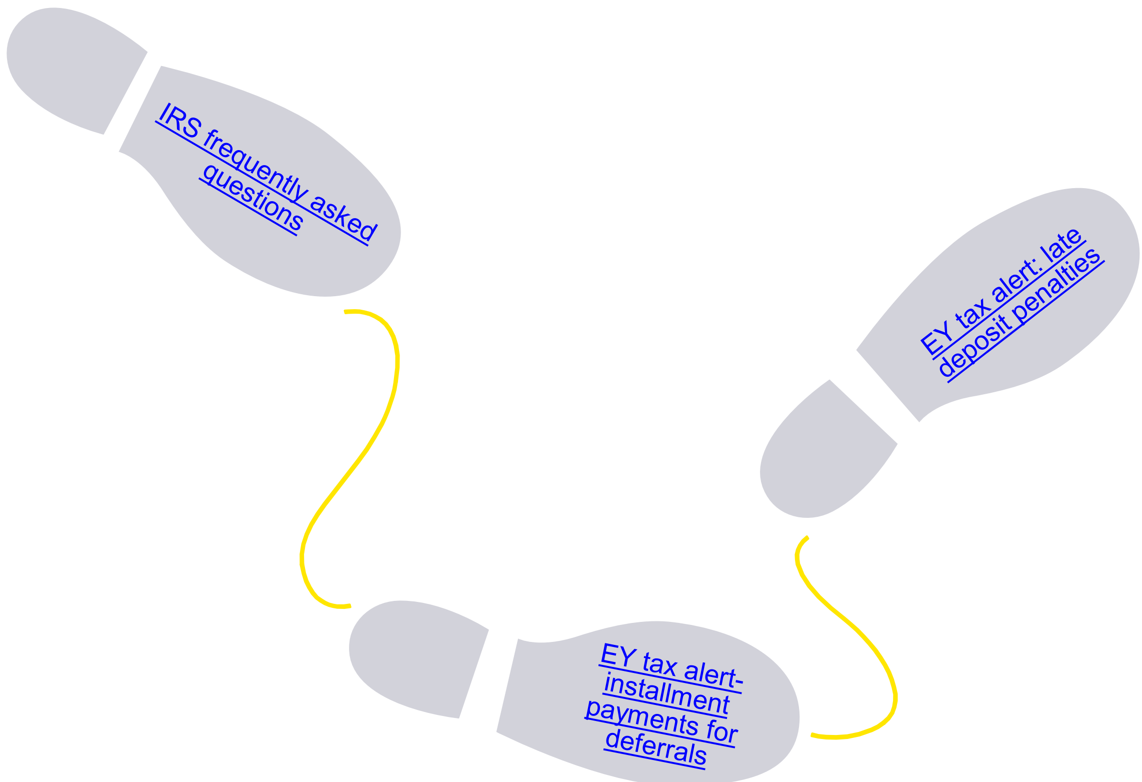
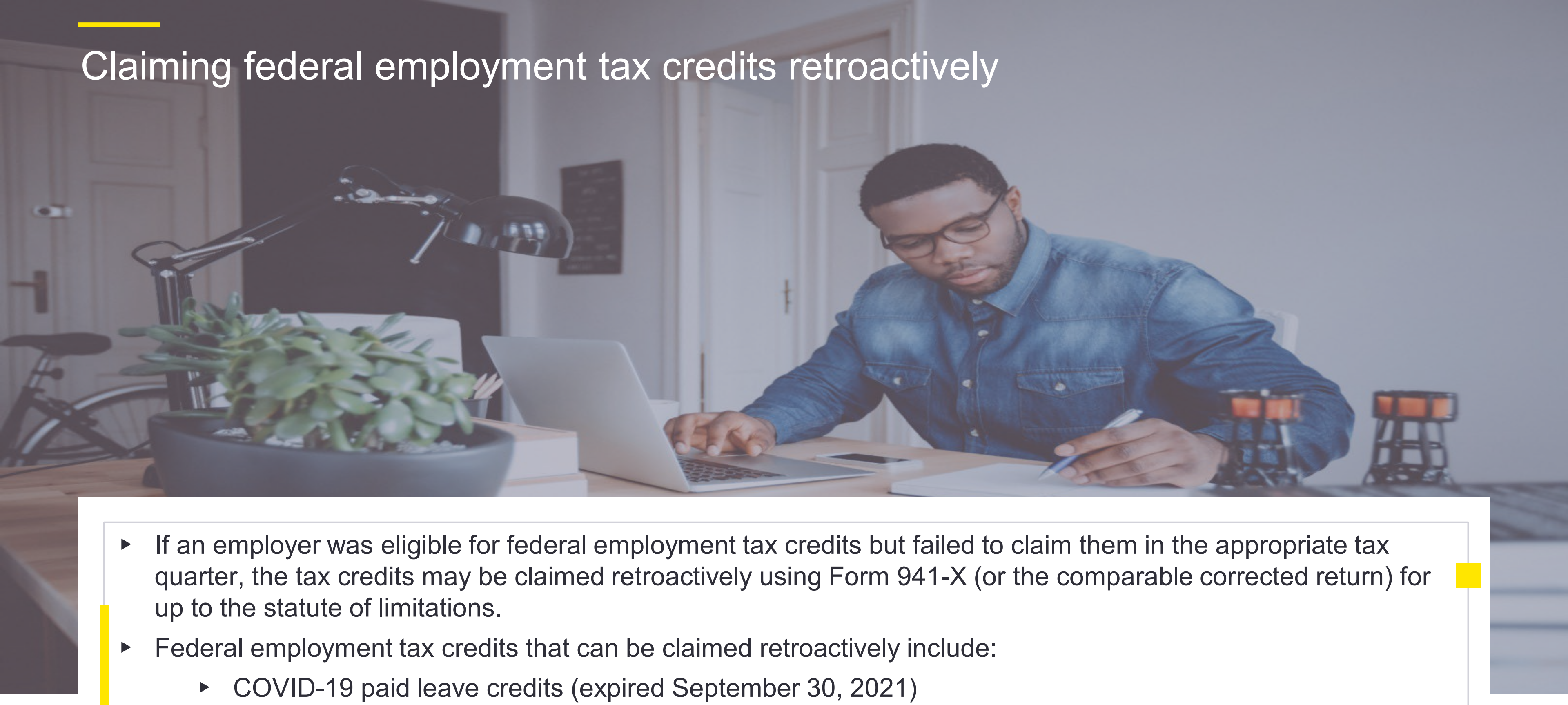
Deferral of employer Social Security tax resources

Find more details about the deferral of employer Social Security tax



Claiming federal employment tax credits retroactively



- If an employer was eligible for federal employment tax credits but failed to claim them in the appropriate tax quarter, the tax credits may be claimed retroactively using Form 941-X (or the comparable corrected return) for up to the statute of limitations.
- Federal employment tax credits that can be claimed retroactively include:
  - COVID-19 paid leave credits (expired September 30, 2021)
  - Paid family and medical leave credit under IRC Section 45S (expires December 31, 2025)
  - ERC (expired September 30, 2021)
  - Disaster zone (DZ) credit
    - 2018, 2019 and 2020
- Employers cannot use Form 941-X to retroactively claim the deferral of employer Social Security tax that applied for covered wages paid from March 27, 2020, to December 31, 2020.

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Statute of limitations for retroactively claiming federal employment tax credits

The statute of limitations for filing Form 941-X is generally three years from April 15 following the tax year of the original Form W-2.

Tax year	Deadline for filing Form 941-X
2018	April 15, 2022
2019	April 15, 2023
2020	April 15, 2024
2021	April 15, 2025
2022	April 15, 2026
2023	April 15, 2027
2024	April 15, 2028

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Polling question

Do you plan to retroactively claim any of the available federal employment tax credits?

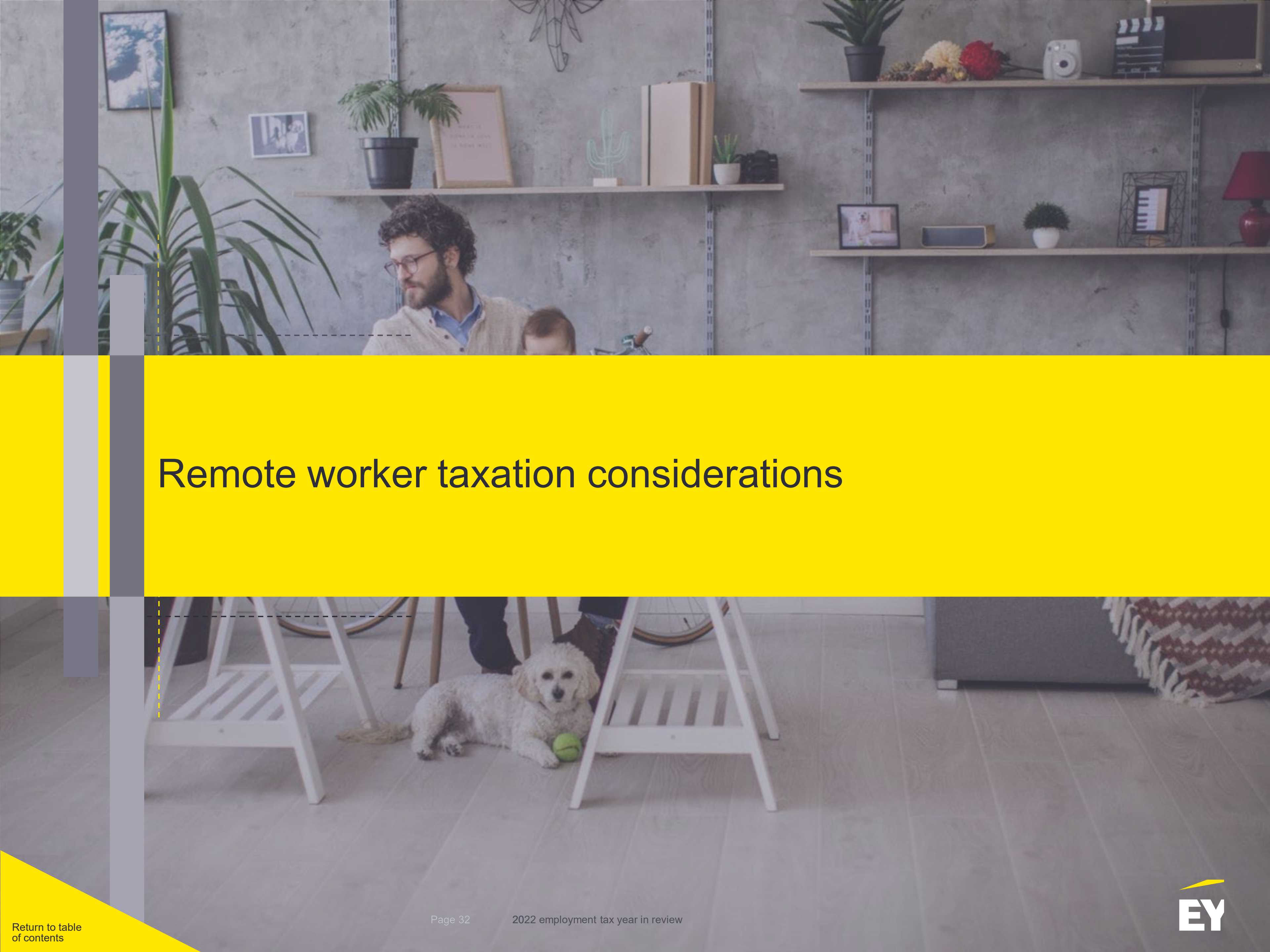
a. Yes

b. No

c. We already claimed these credits

d. Don't know

e. Not applicable (EY, faculty, other)



Remote worker taxation considerations

State income tax temporary rules for COVID-19

- In consideration of temporary state and local COVID-19 emergency health orders that increased telework arrangements, many states and localities imposed temporary state income tax and withholding rules.
- These temporary COVID-19 measures included:
  - A waiver of income tax and withholding for employees temporarily working from home in the jurisdiction
  - The requirement that nonresident income tax continue to apply to employees working from home outside of the state if they worked within the state prior to COVID-19 (same result as a convenience-of-the-employer rule)
  - The option that employers continue to withhold nonresident income tax in the jurisdiction the employee worked before the COVID-19 emergency, even though the employee is now working from home in the resident jurisdiction
- Many employers are allowing (or will continue to allow) for teleworker arrangements beyond the expiration of state/local COVID-19 emergency health orders.
- States have generally allowed their temporary COVID-19 state income tax and withholding rules to expire.

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Examples of temporary income tax and withholding provisions for COVID-19

	Temporary rule	Jurisdiction	Expiration of temporary state/local income tax/withholding rule
1	Income tax withholding is waived for teleworkers temporarily working in the jurisdiction due to COVID-19	Rhode Island South Carolina	September 13, 2021 June 30, 2022
2	Income tax withholding is required if the employee is now working outside of the nonresident jurisdiction, but the employee's primary work location was in this nonresident jurisdiction before COVID-19	Massachusetts Ohio local taxes	September 13, 2021 December 31, 2021
3	Employers have the option to treat wages earned by a teleworker temporarily in the jurisdiction as sourced to the employee's primary work location before COVID-19	Kansas	December 31, 2021

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Regular state income tax withholding rules

Resident

- Resident state income tax withholding and reporting generally apply if the employer is "doing business" in the state. "Doing business" in the state generally includes the following:
  - An employee works from a home office within the state on more than an occasional basis.
  - The employer has business offices in the state.
  - Out-of-state employees perform covered nonresident services in the state.
- Note that even if the employer is not required to withhold resident state income tax, many do offer courtesy withholding.

Nonresident

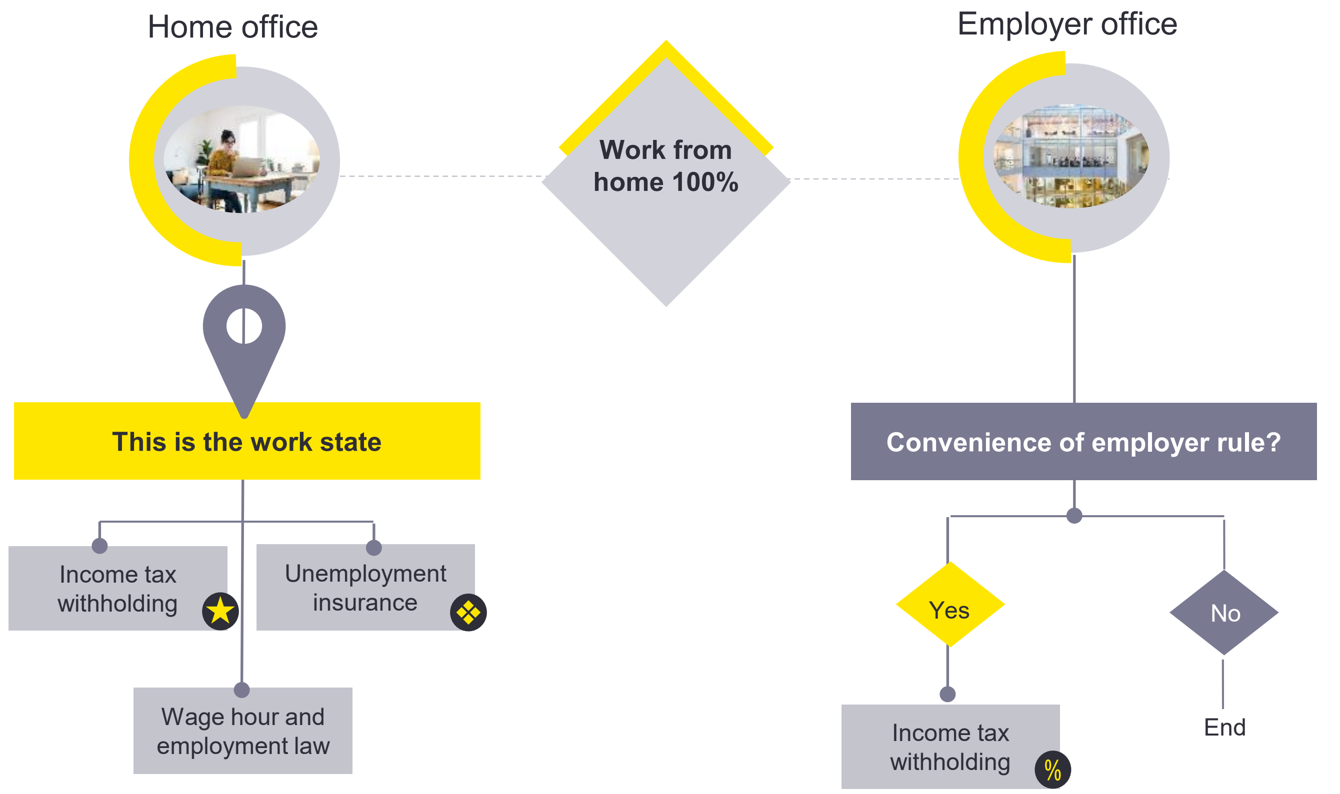
- Under the so-called convenience of the employer rule, a remote worker may be subject to both resident and nonresident income tax in the state where the employer's office is located. A credit is usually, but not always, allowed against the resident income tax for nonresident income tax paid.
- Nonresident income tax generally applies to wages earned for services provided within the state. Some states make an exception to the withholding tax requirement for de minimis dollars earned or days spent in the state in a calendar year.
- Some states have entered into reciprocal agreements whereby income tax withholding is required only in the resident state. This nonresident state income tax exemption applies only if the employee provides a certificate of nonresidence.

Unemployment insurance

- State unemployment insurance applies only in one state at a time, and generally applies where employees spend most of their work time according to the four-prong test.

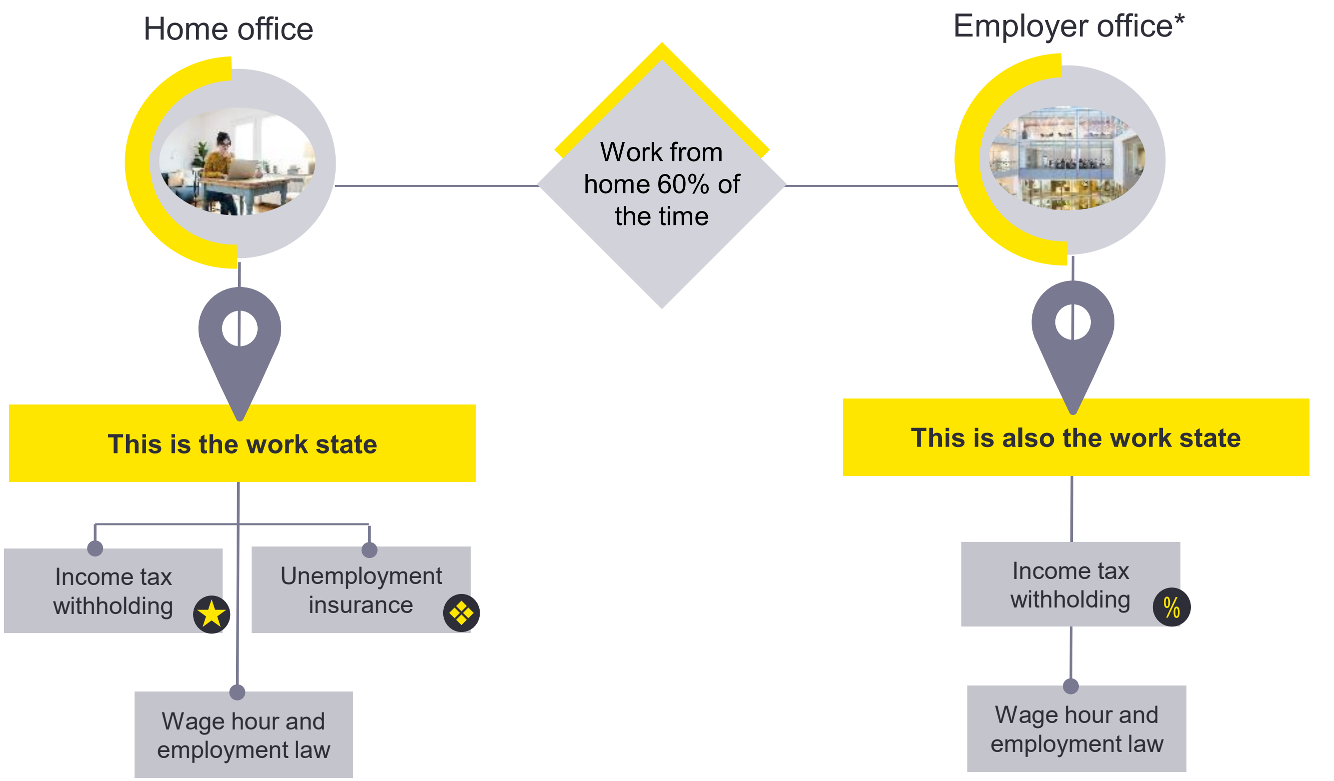
**** Hyperlinks are to the appendix at the end of this slide deck.***

Decision tree
Full-time remote worker



- Income tax generally applies in the resident state on all wages regardless of where earned
- Unemployment insurance applies in only one state where the employee works most of the time (generally, the employee's home office)
- Nonresident income tax applies only to the portion of wages earned in the state; however, if the convenience of the employer rule applies, all wages paid to the employee from the state of the employee's home office may be subject to nonresident income tax
- Nonresident income tax applies only to the portion of wages earned in the state

Decision tree
Hybrid teleworker spends most time at home office



- Income tax applies in the resident state on all wages regardless of where earned
- Unemployment insurance applies in only one state where the employee works most of the time
- % Nonresident income tax applies only to the portion of wages earned in the state; however, if the convenience of the employer rule applies, all wages paid to the employee from the state of the employee's home office may be subject to nonresident income tax
- Nonresident income tax applies only to the portion of wages earned in the state

* Note if there is a reciprocal agreement, nonresident income tax does not apply

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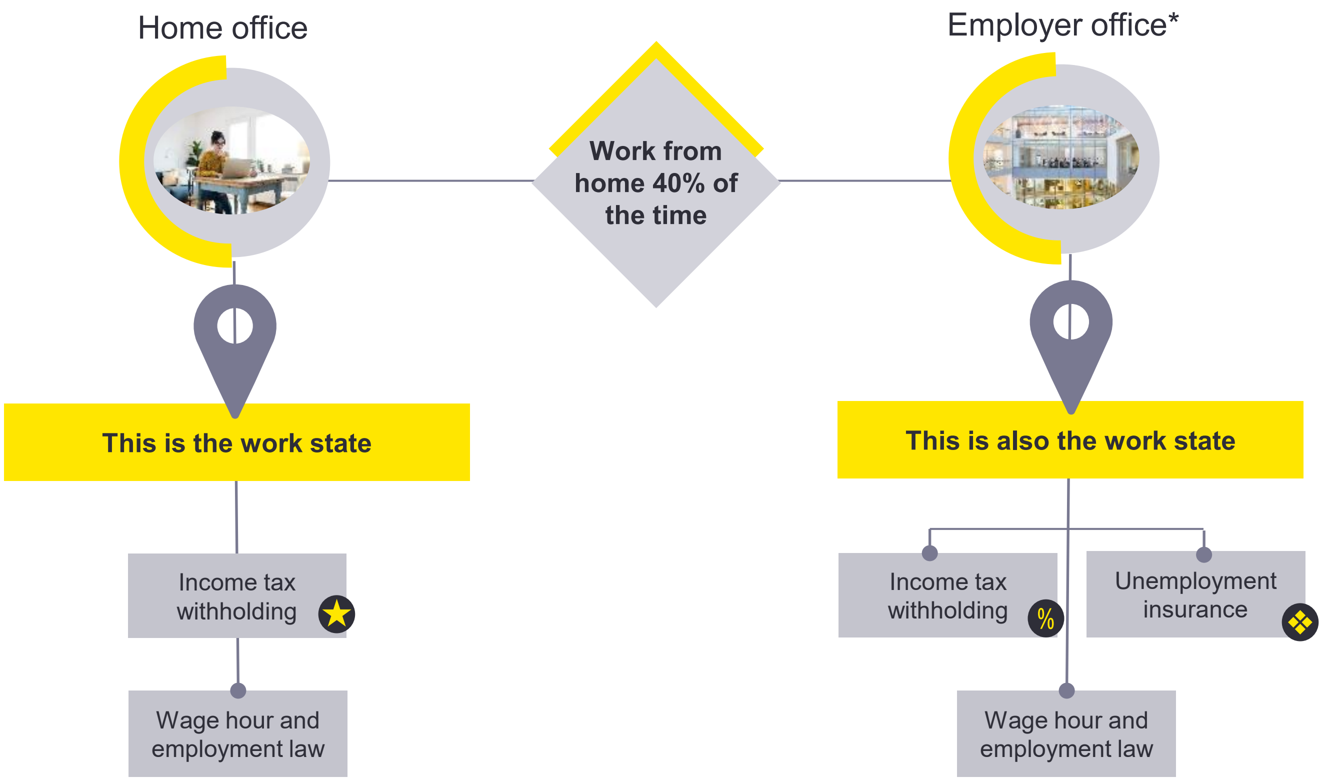
Decision tree

Hybrid teleworker spends most time at employer's office



- ★ Income tax applies in the resident state on all wages regardless of where earned
- Unemployment insurance applies in only one state where the employee works most of the time
- % Nonresident income tax applies only to the portion of wages earned in the state; however, if the convenience of the employer rule applies, all wages paid to the employee from the state of the employee's home office may be subject to nonresident income tax
- Nonresident income tax applies only to the portion of wages earned in the state

* Note if there is a reciprocal agreement, nonresident income tax does not apply

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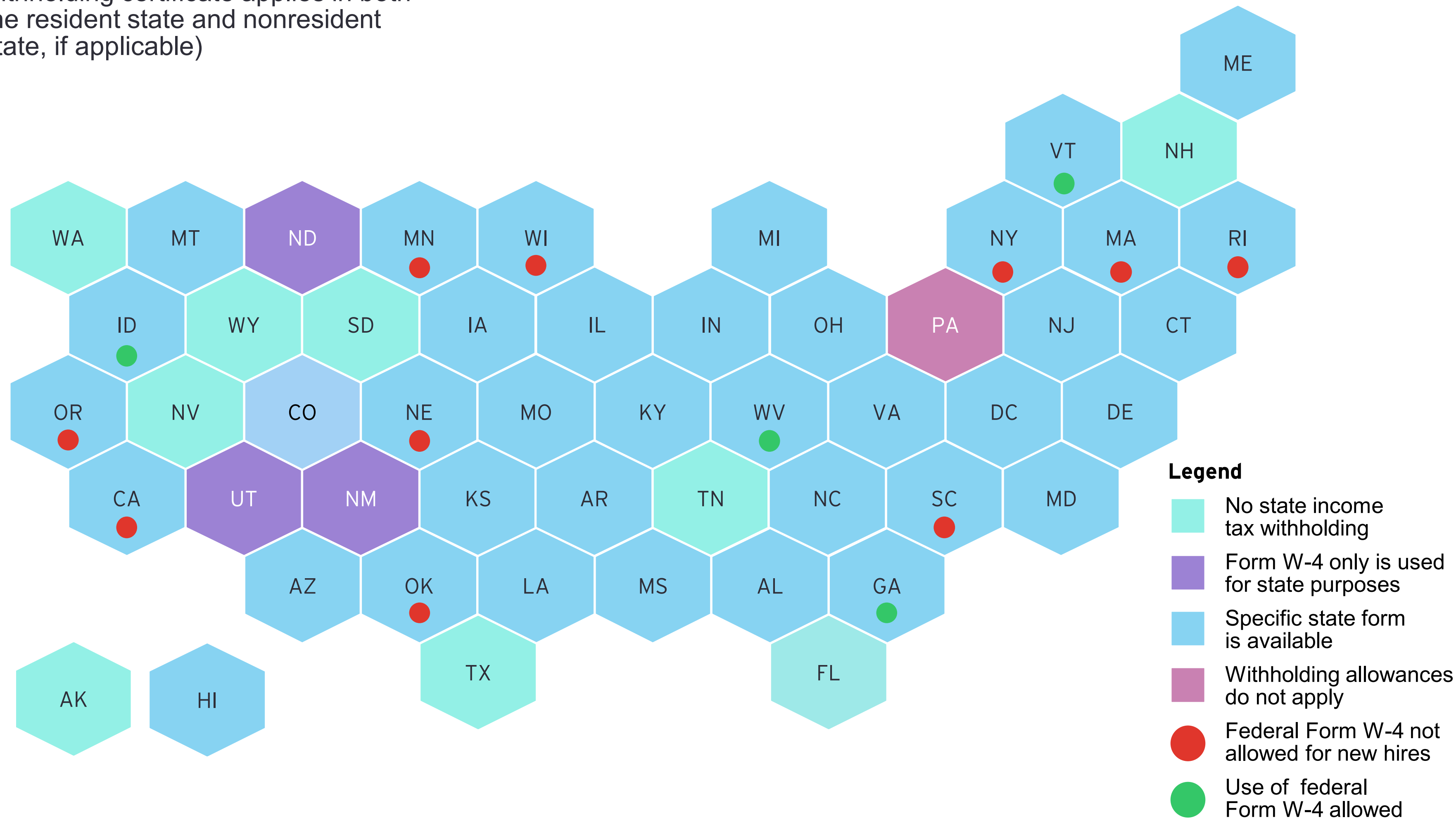
State Form W-4 compliance

General rules for state withholding allowance certificates

Note that a state income tax withholding certificate applies in both the resident state and nonresident state, if applicable)



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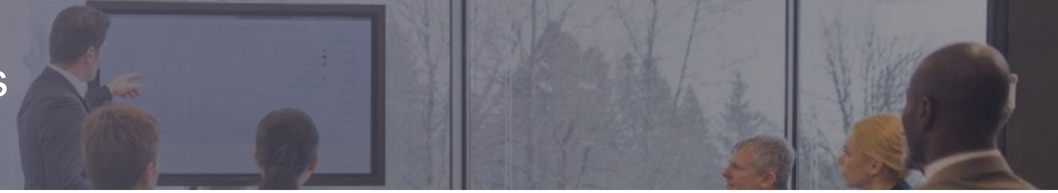

Remote worker policy considerations

1. What levels of approval are necessary for authorizing an employee to telework?
2. Will certain states be excluded from telework arrangements based on cost and complexity ranking?
3. What information resources are available to confirm tax compliance in new work jurisdictions?
4. Who will be responsible for business registrations in the new work jurisdictions?
5. What benefits and resources will be available to teleworkers and what is the tax treatment in the teleworker's jurisdiction?
6. How will you confirm the physical work location of teleworkers?
7. How often will you review/audit the work location of teleworkers?

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Polling question

Are you tracking the home office location of your teleworkers for payroll tax compliance purposes?

a. Yes

b. No

c. Not currently, but we plan to do so in 2023

d. Don’t know

e. Not applicable (EY, faculty, other)

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State trends and developments

Retroactive state income tax withholding for 2022

- In the lead-up to the 2022 midterm elections, many governors and state legislators made taxes a high priority, most of them reducing personal income tax rates. Some of these tax cuts were retroactive to January 1, 2022, creating an unprecedented tax withholding maintenance challenge for businesses.
- An added challenge this year came from those few states (and the District of Columbia) that enacted 2022 personal income tax rate changes in 2021 but were late to revise their 2022 withholding tables and instructions (or did not revise them at all).
- Employers should be certain to review these changes as part of their year-end activities, and if state income tax withholding did not reflect the 2022 state personal income tax rates, employers should consider sending notices to employees explaining that the state's update of its withholding tables and instructions does not necessarily align with the effective date of tax law changes.
- On the following page is a recap of these state income tax developments.

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Late state income tax withholding changes to note for 2022*

1

Alabama

In late April, the Alabama Department of Revenue issued revised *Withholding Tax Tables and Instructions for Employers and Withholding Agents* to reflect changes to the standard deduction and dependent exemption amounts under legislation enacted in 2022. The personal income tax rates are unchanged. The revised income tax withholding tables were effective immediately.

2

Arizona

The Arizona Department of Revenue announced that SB 1828, enacted in 2021, substantially lowers individual income tax rates effective for tax year 2022 and 2023, and the current Form A-4, *Arizona Withholding Percentage Election* (rev. 1-1-2022), did not reflect these rate cuts. Accordingly, the Department published a revised Form A-4 (10-28-2022), which employees may begin using immediately.

3

Arkansas

The Arkansas Department of Revenue released the revised withholding tax formula reflecting changes made by SB.1 (Act 2), enacted on August 11, 2022. Retroactive to January 1, 2022, SB.1 lowered the top marginal income tax rate from 5.5% to 4.9% and increased the income level at which the highest tax rate applies. SB.1 accelerated the tax cuts that were signed into law in December 2021 and this move is anticipated to save taxpayers over $400 million. (*Governor Hutchinson, Summary of Tax Cuts*.) The revised withholding formula was effective with wages paid on after October 1, 2022. The Department also revised its *Withholding Tax, Employer's Instructions*.

4

Colorado

Colorado voters approved Proposition 121 in November 2022 which lowers the states' personal income tax rate from 4.5% to 4.4% retroactive to January 1, 2022.

***Click on the state name to read the full EY Tax Alert.**

Late state income tax withholding changes to note for 2022*, *continued*

5

District of Columbia

The District of Columbia's Office of Tax and Revenue has confirmed that although its latest income tax withholding instructions and tables were published in 2018, employers are encouraged to take 2022 law changes into account when withholding income tax. A change in law, effective January 1, 2022, increased D.C. income taxes for individuals earning more than $250,000. Businesses should note that the increase in the highest tax rate (from 8.95% to 10.75%) also applies to withholdings on lump-sum pension distributions. (*OTR Tax Notice 2012-02*.)

6

Idaho

Changes in Idaho law retroactively modified the state's income tax withholding rates and wage brackets, effective January 1, 2022. These changes resulted in lowering the income tax for many Idaho taxpayers. On June 15, 2022, the Idaho State Tax Commission released revised income tax withholding tables that employers were instructed to use immediately. Due to the law, employers using the highest income tax rate for bonuses and similar payment should have reduced that rate from 6.5% to 6.0% going forward.

7

Maryland

In March 2022, the Comptroller of Maryland issued an updated Maryland Employer Withholding Guide to reflect changes in the standard deduction rates enacted in 2018. The updated guide shows changes in the percentage method of income tax withholding, now reflecting a minimum standard deduction of $1,600 and a maximum of standard deduction of $2,400.

8

South Carolina

On June 18, 2022, South Carolina Governor Henry McMaster signed into law S. 1087, which lowers the state's top marginal tax rate from 7% to 6.5% retroactive to January 1, 2022. Beginning with Tax Year 2023, and each year thereafter until the top marginal rate equals 6%, the top marginal rate must decrease by 0.1% if general fund revenues are projected to increase by at least 5% in the fiscal year that begins during the tax year. The 2022 South Carolina income tax withholding tables continue to reflect the highest marginal tax rate of 7%.

***Click on the state/jurisdiction name to read the full EY Tax Alert.**

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EY

Late state income tax withholding changes to note for 2022*, *continued*

9

Utah

The Utah Tax Commission updated its Withholding Tax Guide to reflect revised income tax withholding tables that applied for payroll periods beginning on and after May 1, 2022. The revisions to the withholding tax tables reflect legislation enacted earlier this year that lowers the state's personal income tax rate. By way of background, Governor Spencer J. Cox approved legislation under SB 59, which, retroactive to January 1, 2022, lowered the state's personal income tax from 4.95% to 4.85%.

10

Virginia

The Virginia Department of Taxation (DOT) released updated wage bracket and withholding formulas, which are effective with wages paid on or after October 1, 2022. The updated tables and formulas reflect an increase in the standard deduction effective January 1, 2022, as enacted under HB 30 and approved by Virginia Governor Glenn Youngkin on June 22, 2022.

For the complete list of 2022 state income tax withholding rates and tables, as well as other state payroll tax information for 2022, view our special report.

***Click on the state name to read the full EY Tax Alert.**

Statutory/judicial developments for remote and hybrid workers

- Jurisdictions are increasingly aware of the increase in remote and hybrid work arrangements following COVID-19 and are either proactively enacting laws or adjusting administrative guidelines to address the challenges they present.
    - More states are relieving nonresidents of state income tax if they work in the state for a short duration in the year (termed a de minimis exception).
    - Some states are taking action to address the controversial convenience of the employer rule.
    - Interest groups are encouraging more states to enter into reciprocal agreements to eliminate nonresident income tax for employees who work across neighboring borders.
- Legal challenges to the convenience of the employer rule are increasing.
- Examples of these developments are recapped on the following page.

Statutory/judicial developments for remote and hybrid workers, *continued*

Jurisdiction	Date	Link*	Summary
California	6/20/2022	California is Prepared for Remote Work Boom, Says FTB Staff	California FTB staff says it is prepared to address the tax enforcement complications that will result from the growth of telecommuting in the post-pandemic era. Specifically, the Franchise Tax Board confirmed that employees of an out-of-state business working in California could create nexus and nullify protections under P.L. 86-272
Missouri, St. Louis	3/29/2022 and 8/30/2022	Boles v. City of St. Louis, Case No. Case No.: 4:21-cv-378	A class action suit was filed by employees who were subject to the St. Louis earnings tax during COVID-19 but who were working remotely outside of the city (convenience of the employer rule)
New Hampshire	7/17/2022	New Hampshire Enacts Bill on Out-of-State Taxation of Remote Workers	New Hampshire declares that wages earned by New Hampshire residents who are employed by an out-of-state entity but perform all their work in New Hampshire will not be subject to personal income taxation in any other state
New Jersey	9/1/2022	New Jersey Governor Phil Murphy press release	New Jersey Governor Phil Murphy announced that he supports a bipartisan proposal to impose the convenience of the employer rule to establish parity with New York and tax credits to incentivize New Jersey residents to file legal actions against other states that collect taxes from them for services they perform while physically in New Jersey
Ohio	4/5/2022	Ohio Supreme Court declines to hear appeal of challenge to city's income tax provisions for remote workers	Ohio legislature reverses COVID-19 temporary convenience of the employer for local taxes

* Access to some of these links may require a subscription (i.e., Tax Notes, Checkpoint).

Statutory/judicial developments for remote and hybrid workers, *continued*

Jurisdiction	Date	Link*	Summary
Ohio	7/12/2022 (Ohio Supreme Court accepted the appeal on 7/7/2022)	Ohio Supreme Court to Review Ohio City Income Tax Imposition on Remote Workers	The Ohio Supreme Court accepted an appeal of a decision to uphold an Ohio city's imposition of income taxes on remote workers, which deems employees to be performing personal services at their principal place of work even though their employer required them to perform those services at their home due to the COVID-19 emergency
Puerto Rico	8/3/2022	PR New Law on Remote Workers of Out-of-State Employers	Puerto Rico will not require income tax withholding for out-of-state businesses with remote workers in Puerto Rico, effective 12/31/21, subject to meeting specific requirements
Utah	1/1/2023	Utah Law Adopts Model De Minimis Exception for NR Income Tax	Effective January 1, 2023, Utah law adopts model de minimis exception from nonresident income tax, wherein Utah state income tax withholding is not required for a nonresident employee performing services in Utah for 20 or fewer days during a calendar year
Vermont	6/24/2022	Vermont—Withholding Tax Guidance for Relocated and Remote Workers	The Vermont Department of Taxes published updated guidance for relocated and remote workers, deeming an individual's income subject to Vermont income taxes if they live and work remotely in Vermont
West Virginia	4/9/2021	West Virginia Law Eases Income Tax Burden for Employees Temporarily in the State	West Virginia eases income tax burden for employees working temporarily in the state for 30 or fewer days, subject to certain requirements
All states	11/16/2022	The case for state income tax reciprocity	The Tax Foundation makes the case for state income tax reciprocal agreements to ease tax challenges for hybrid workers

* Access to some of these links may require a subscription (i.e., Tax Notes, Checkpoint).

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Federal and state unemployment insurance

- COVID-19 created a significant increase in unemployment insurance claims, which has had – and will continue to have – an adverse impact on employers' FUTA and SUI costs.
  - Jurisdictions with insolvent UI trust funds borrowed money to pay UI benefits as a result of COVID-19. They had the option of financing this debt through bonds or by accepting federal UI loans.
  - A total of 23 states and the Virgin Islands accepted federal UI loans in years 2020-2022; however, all but 5 jurisdictions had a balance on November 10, 2022, requiring a FUTA credit reduction.
  - Most states repaid their federal UI loan balances with federal funds from the Cares Act, ARPA, or a combination of both.
  - Regardless of how the trust fund debt is financed, jurisdictions often pass the interest cost on to employers through a SUI surcharge. These surcharges are not treated as SUI contributions for purposes of reporting creditable state wages on the Form 940.
  - In anticipation of interest charges for UI trust fund financing in 2020 through 2022, Massachusetts, Minnesota, New York (effective in 2022), Texas and the Virgin Islands currently impose interest surcharges on employers.

FUTA credit reduction for unpaid federal loans

2020
- State receives federal loan to pay unemployment insurance benefits

2021
- Interest accrues starting Sept. 6, 2021, with payment due each year by Sept. 30 (and state may create an SUI surcharge to collect cost back from employers)
- Virgin Islands has a FUTA credit reduction for unpaid loans dating back to 2009; therefore, the 2021 FUTA tax rate for Virgin Islands wages is 3.9%

2022
- FUTA credit reduction of 0.3% applies if loan balance exists on Nov.10 (paid with the 2022 Form 940)
- Interest due by Sept. 30

2023
- FUTA credit reduction of 0.6% applies if loan balance exists on Nov. 10 (paid with the 2023 Form 940)
- Interest is due on Sept. 30 (and the state may create a surcharge to collect interest from employers)

2024
- FUTA credit reduction of 0.9% applies if loan balance exists on Nov. 10 (paid with the 2024 Form 940)
- Interest is due on Sept. 30
- Additional FUTA credit reduction is triggered under the 2.7[1] add-on

2025
- FUTA credit reduction of 1.2% applies if loan balance exists on Nov. 10 (paid with the 2025 Form 940)
- Interest is due Sept. 30

- Additional BCR FUTA credit reduction is triggered
- Or, additional 2.7[1] add-on to FUTA credit reduction is triggered

2026
- FUTA credit reduction of 1.5% applies if loan balance exists on Nov.10 (paid with the 2026 Form 940)
- Interest is due Sept. 30

- Additional BCR FUTA credit reduction is triggered
- Or, additional 2.7[1] add-on to FUTA credit reduction is triggered

[1] This is not a percentage

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Jurisdictions with a FUTA credit reduction in 2022

Federal loan balances as of November 10, 2022 per Treasury Direct			
Jurisdiction	**First year of loan**	**Federal UI loan balance**	**Net 2022 FUTA rate**
California	2020	$17,987,664,492.91	0.9%
Connecticut	2020	$64,330,076.23	0.9%
Illinois	2020	$1,362,645,002.82	0.9%
New York	2020	$7,743,501,256.75	0.9%
Virgin Islands	2009	$95,854,314.07	4.2% (relief was given from the benefit-cost rate (BCR) add-on for 2022)

Employers will be subject to a FUTA tax rate of 0.9% for tax year 2022 for the above states because the states had outstanding loan balances on November 10, 2022 (and for two consecutive years). Note that the Virgin Islands has a higher net FUTA rate because it had a loan balance since 2009. (*U.S. Department of Labor Final 2022 FUTA Credit Reductions*.)

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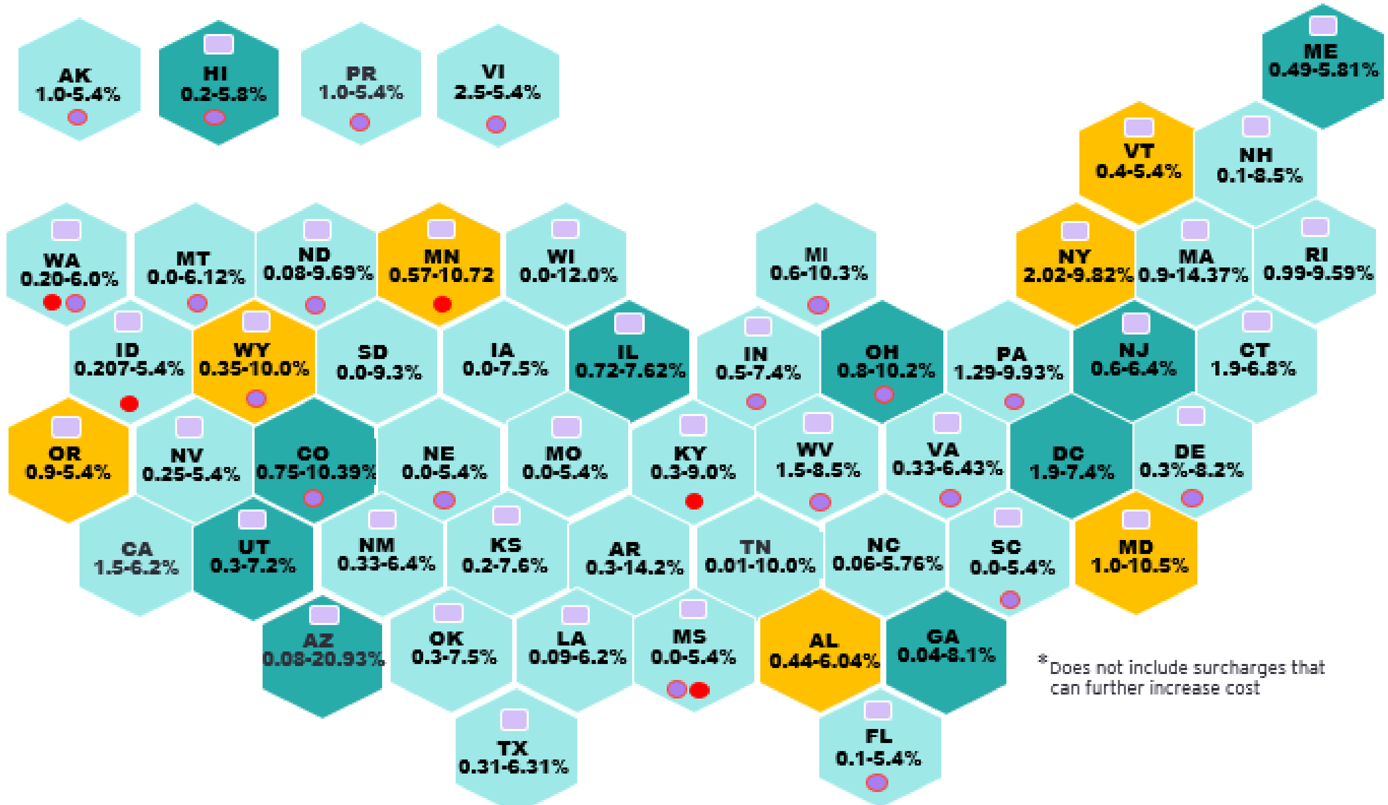
2022 SUI base tax rates for experience-rated employers



SUI base tax rates decreased from 2021

SUI base tax rates unchanged from 2021

SUI base tax rates increased from 2021

Action taken to lower 2022 SUI tax rates

2022 SUI tax rate notice reissued

A higher penalty rate applies to delinquent employers

Source, Ernst & Young LLP survey results

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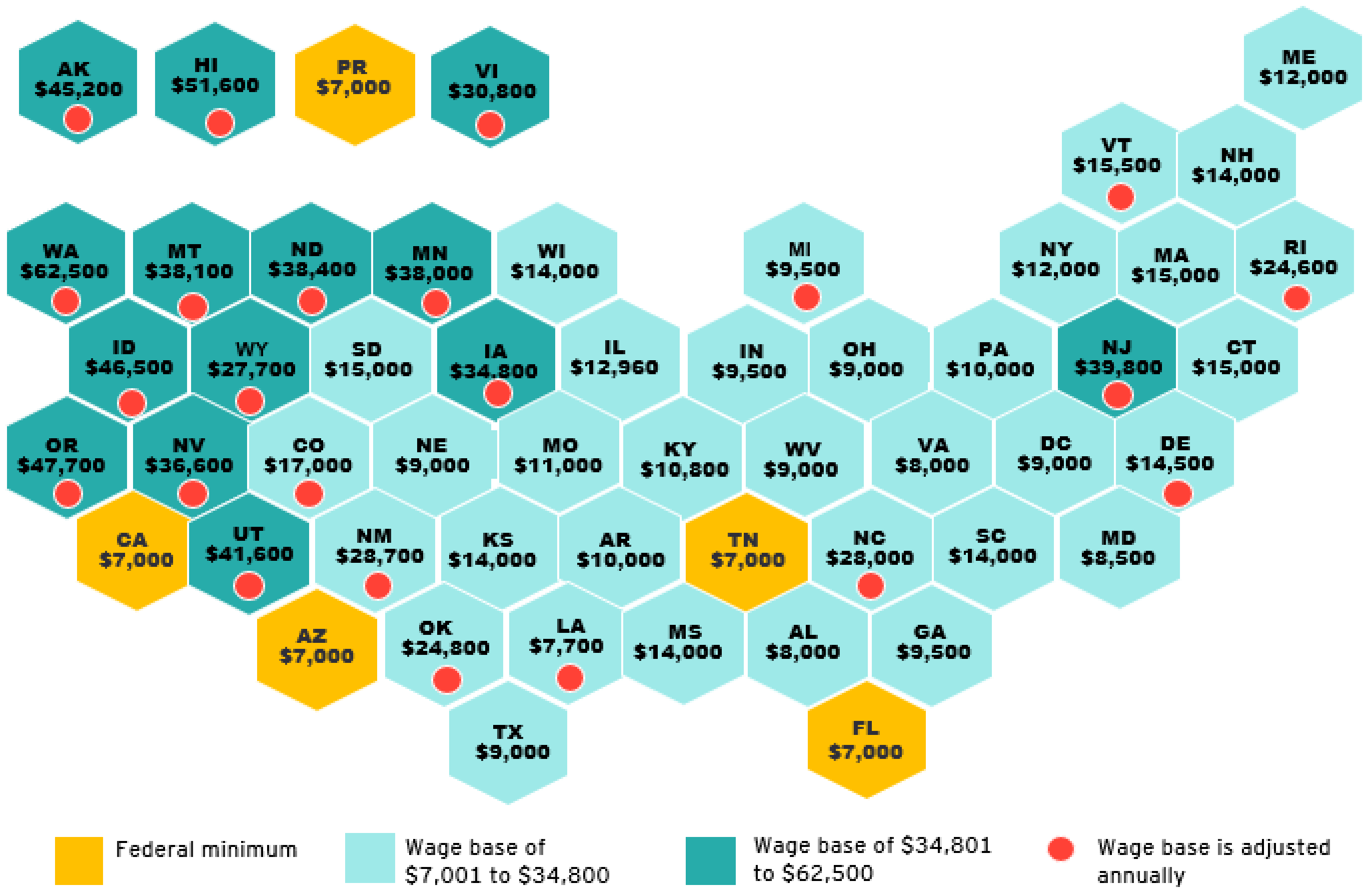
2022 SUI wage bases



Source, Ernst & Young LLP survey results

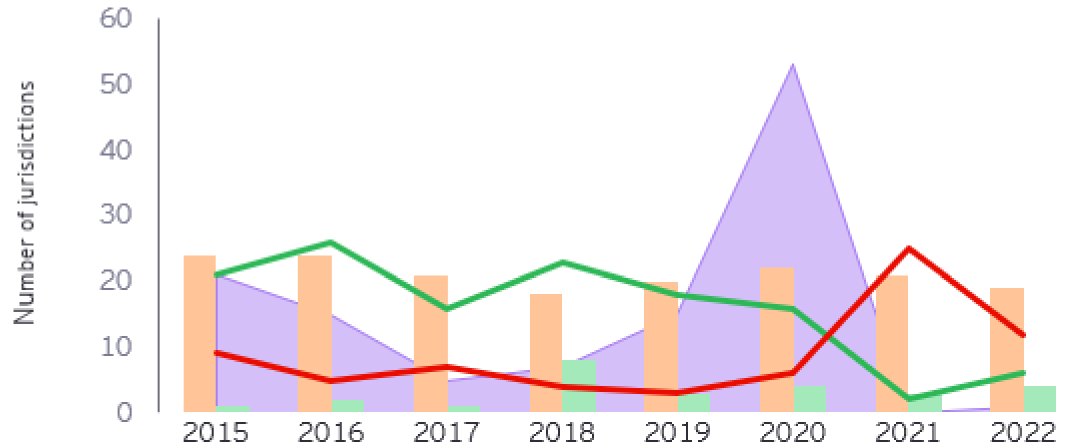
2022 SUI cost trends

Observations of cost trends 2015 to 2022

- Numerous jurisdictions transferred federal stimulus dollars into their state trust funds to suppress increases that may have otherwise occurred in the base SUI tax rates for 2022.
- The jobless rate decreased in all but one jurisdiction from 2021 to 2022 reflecting a recovery of job loss sustained in the height of the COVID-19 emergency.

SUI wage base, tax rates and jobless rates

Basic comparison 2015-2022



	2015	2016	2017	2018	2019	2020	2021	2022
States with increase in jobless rate	21	15	5	7	15	53	0	1
Increase in wage base	24	24	21	18	20	22	21	19
Decrease in SUI wage base	1	2	1	8	3	4	3	4
Decrease in SUI base tax rates	21	26	16	23	18	16	2	6
Increase in SUI base tax rates	9	5	7	4	3	6	25	12

Rev. 5/18/2022

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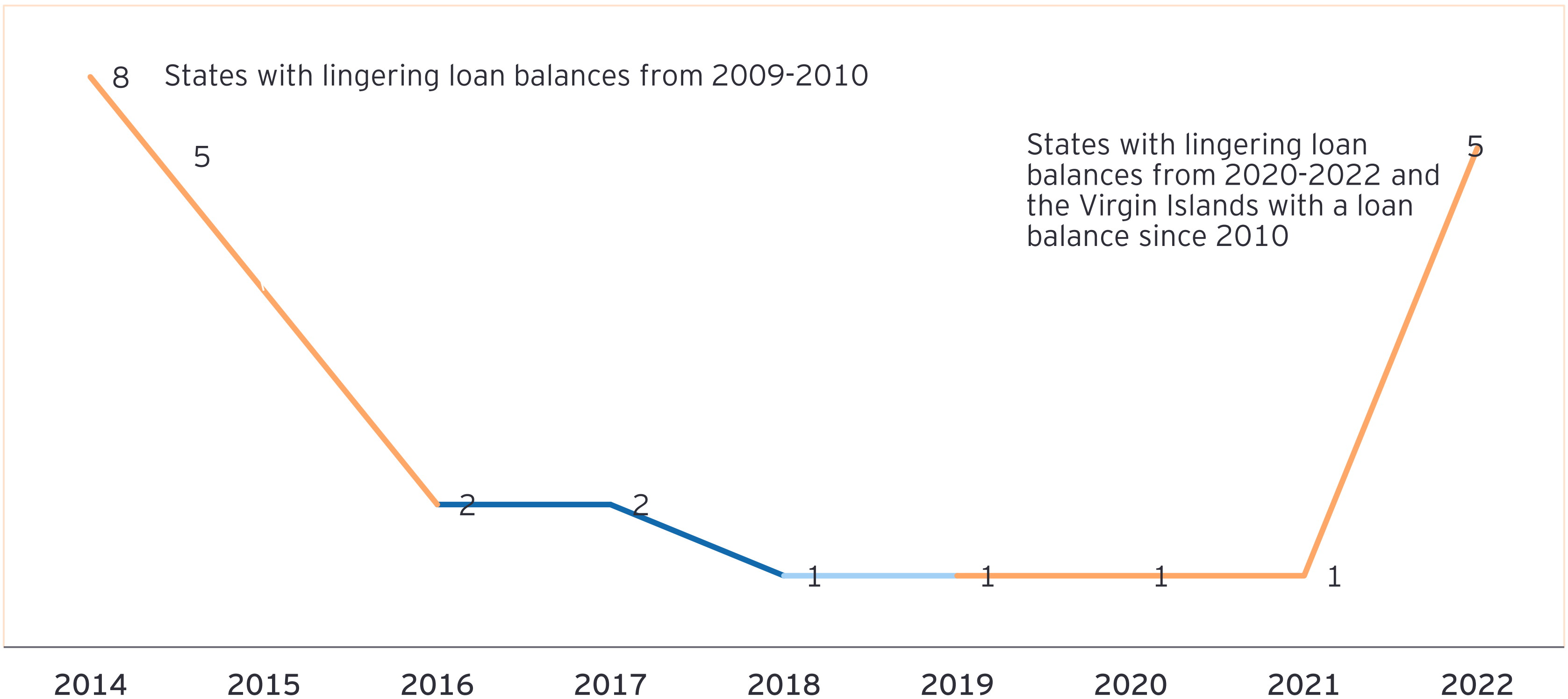
FUTA credit reduction trends

Number of jurisdictions subject from 2014–2022*



*Note that most states avoided the FUTA credit reduction by using federal COVID-19 stimulus funds to pay off their FUTA loan balance. See EY Tax Alert 2022-1536 for more information.

Source, Ernst & Young LLP survey results

Polling question

Are you a Certified Payroll Professional (CPP) or Fundamental Payroll Certification (FPC) professional through the American Payroll Association?

a. Yes

b. No

Year-end reporting considerations

Year-end payroll tax reconciliation steps

1 Geographic survey

Extract for the tax year a list of employee work and resident locations. Flag the locations where SIT/SUI returns have not been filed and identify/resolve gaps.

2 Income tax withheld

Flag employees with no federal, state or local income tax withheld and confirm that an exemption from income tax withholding is reasonable. Identify appropriate resolution where necessary.

3 Taxable wages

Reconcile year-to-date FIT wages to SIT wages and explain differences; reconcile year-to-date FUTA and SUI taxable wages and explain differences. Differences should reflect only inconsistency in federal/state wage definitions.

4 Wage limits

Confirm that year-to-date Social Security, FUTA and SUI taxable wages do not exceed the annual wage limit; confirm that taxes paid and withheld are correct based on wages times applicable tax rate. Identify appropriate resolution where necessary.

5 Information boxes

Review earnings and deduction codes to confirm that federal and state Form W-2 information box requirements are correct (e.g., boxes 10, 11, 12 and 14)

Federal Combined Annual Wage Reporting (CAWR)

Reconciliation of Forms 941/941-X to Forms W-2/W-2c

The IRS and Social Security Administration compare the reported amounts below. Unresolved discrepancies (positive or negative) can result in a civil penalty equal to 10% of the largest dollar amount (usually, Medicare wages).

W-2 Box	941 Line	Description
2	3	Federal income tax withheld
3	5a	Social Security wages
3	5b	Social Security tips
5	5c	Medicare wages
5	5d	Wages subject to Additional Medicare Tax

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Form W-2 correction timeline

Error on Form W-2 is discovered

Prepare Form W-2c and give to employee

30 days

Obtain FICA consent letter from employee

30 days

Issue FICA refund to employee

45 days

File corrected Form 940

End of month following close of next quarter

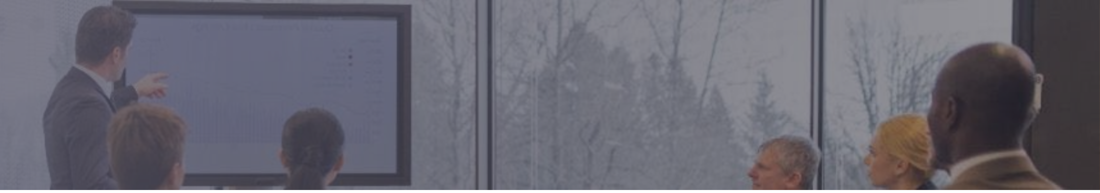
File Forms W-2c with SSA and Form 941-X with IRS

End of month following close of next quarter

File corrected state and local returns

Reconcile for all jurisdictions

Year-end employee notices
Mandatory



1 **The special accounting rule/no federal income tax withholding on personal-use auto** — employee notices should be provided by January 31, 2023, if the special accounting rule was used in 2022 or if you will elect not to withhold federal income tax from the value of personal use of company cars in 2023.

2 **Charitable contributions** — you are required to provide employees with a report of the annual total of charitable contributions paid through payroll deduction. Consider using Form W-2, box 14, for this purpose. See IRS Publication 1771.

3 **Earned Income Tax Credit (EITC)** — for federal purposes, Form W-2, Copy B, includes the notice that employers are required to provide to employees concerning their eligibility for the Earned Income Tax Credit. Some states and localities require a separate notification (other than Form W-2, Copy B) and may also impose a different annual deadline for making it available to employees.

See more information on the federal EITC here.

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Year-end employee notices
Suggested

1. **Expiring Form W-4** — notify employees who claimed exemption from federal income tax withholding in 2022 that they are required to furnish you with a 2023 Form W-4 by February 15, 2023. Verify state rules concerning withholding allowance certificates claiming exemption and include state expiring information on the same employee notice.

2. **2023 withholding tax changes** — notify employees of any change in the amount of tax they will pay in 2023 for Social Security, Medicare or federal, state and local income tax withholding.

3. **Additional Medicare Tax reminder** — employees with wages in excess of $200,000 in 2022 should be reminded of their requirement to file with the IRS Form 8959, *Additional Medicare Tax*.

4. **Multistate employees** — for employees who worked in more than one state, consider providing a detail of the taxable wages that were paid within each work state. This is particularly relevant for employees working in New York because employers are required to report federal taxable wages (Form W-2, box 1) as state taxable wages (Form W-2, box 16).

For more information on multi-state payroll tax compliance, see our special report.

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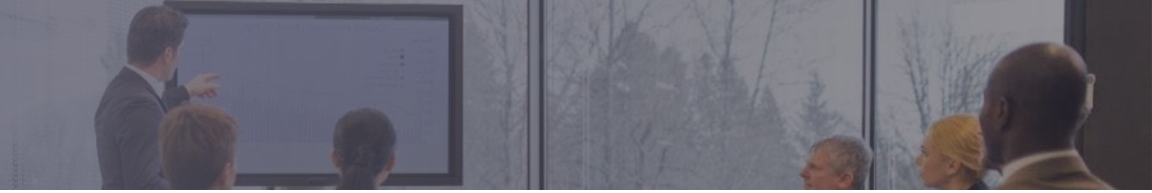
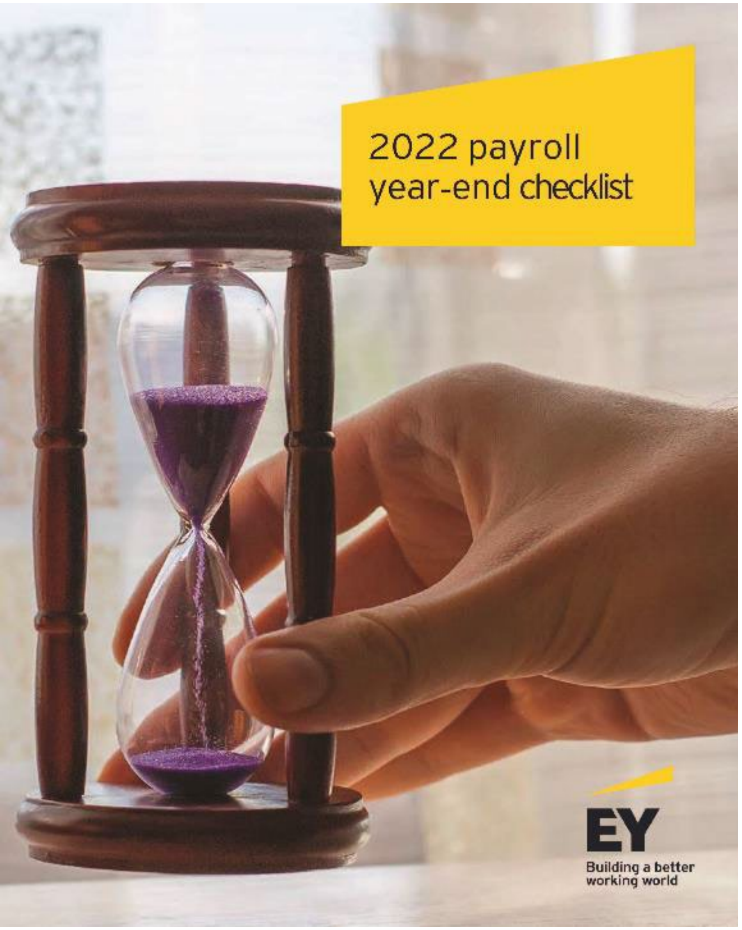
Resources

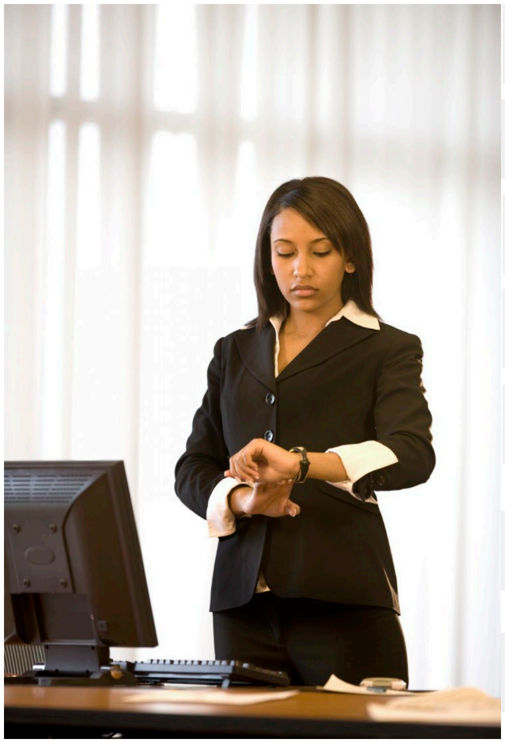


EY special reports



- 2022 payroll year-end checklist
- Managing your third-party payroll provider
- Employment tax rates and limits (2022)
- Federal/state Form W-4 compliance (2022)
- Fringe benefits FAQs for 2022
- Courtesy withholding
- Taxation of paid family and medical leave insurance benefits
- Federal fringe benefits reporting chart
- Third-party sick pay
- Managing wage repayments

2022 Form W-2 resources



- 2022 Form W-2
- 2022 Form W-2 and W-3 instructions
- SSA specifications for filing electronically
- SSA AccuWage (testing files)
- IRS specifications for substitute forms (Pub. 1141)
- Ernst & Young LLP Correcting W-2 errors
- Request a year-end training session

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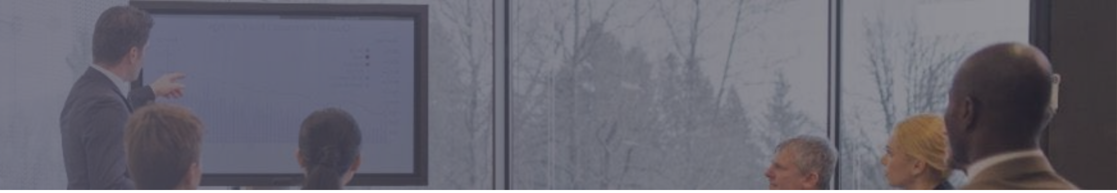
Acronyms



Acronyms used in this presentation

ARPA	American Rescue Plan Act of 2021
BCR	Benefit-cost ratio
CAA	Consolidated Appropriations Act, 2021
CARES Act	Coronavirus Aid, Relief, and Economic Security Act
COBRA	Consolidated Omnibus Budget Reconciliation Act of 1985
DOL	U.S. Department of Labor
ERC	Employee Retention Credit
EPSLA	Emergency Paid Sick Leave Act under the FFCRA
FFCRA	Families First Coronavirus Response Act
FICA	Federal Insurance Contribution Act (Social Security and Medicare tax)
FIT	Federal income tax
FITW	Federal income tax withholding
FMLA	Family and Medical Leave Act (Expanded FMLA refers to COVID-19 extended paid leave under the FFCRA)
FUTA	Federal unemployment insurance tax
NQDC	Nonqualified deferred compensation
RRTA	Railroad Retirement Tax Act
SIT	State income tax
SITW	State income tax withholding
SSA	Social Security Administration
SUI	State unemployment insurance
SSN	Social Security number

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State unemployment insurance four-prong test

Employer

- Where wages are paid

  and

- There is a covered employee

Covered employee

- Applies only in one state at a time
- Temporary work incidental to the main job location is not considered

The SUI state is where the employee performs some work, and (in this order):

- Where the work is localized
- The employee's base of operations

or

- The employee's place of control

- If none of the above:
  - The employee's residence

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State unemployment insurance four-prong test
Example

Employer

- Headquarters office is New York
- Employment and employees are UI covered in all states

Employee

- Works across two states, Texas and Louisiana
- Home office is in Texas
- General manager is in New Mexico

The employee work state is (in this order):

- Where the work is localized (N/A)
- Employee's base of operations (Texas)
- Employee's place of control (New Mexico)

If none of the above:

- Employee's residence

Since work is not localized in one state, and Texas (rather than New York) is the base where the employee normally receives instructions, mail, etc., Texas is the unemployment insurance state

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Convenience of the employer rule

Some states (e.g., New York) and localities (e.g., Philadelphia) take the position that 100% of the wages paid to a nonresident in the year are subject to its income tax if the employee is working outside of its state (or locality) for the employee's own convenience rather than the necessity of the employer

- For New York, the requirement applies when an employee's assigned, or primary work location is an established office in New York and the employee spends at least one day in New York in the tax year
- To argue that a work location is for the employer's convenience, there must be a direct business benefit in having the employee work outside of New York
- The rule results in the sourcing of 100% of wages to both New York and the resident state (rather than sourcing to New York only those wages earned within the state)
- The US Supreme Court declined to hear a challenge concerning the constitutionality of this law

States that impose the convenience of the employer rule

Arkansas (reversed effective April 30, 2021)
Legal Opinion No. 20200203

Connecticut*
Conn. Gen. Stat. Section 12-711(b)(2)(C)

Delaware
Del. Code. Tit. 30, Section 1124(b)(1)(b)

Nebraska
316 Neb. Admin. Code Section 22-003.01C(1)

New York
20 NYCRR Section 132.18(a); Technical Memorandum TSB-M-06(5)I)

Pennsylvania
61 Pa. Code Section 109.8

*Connecticut imposes the rule only if the resident state also imposes the rule.

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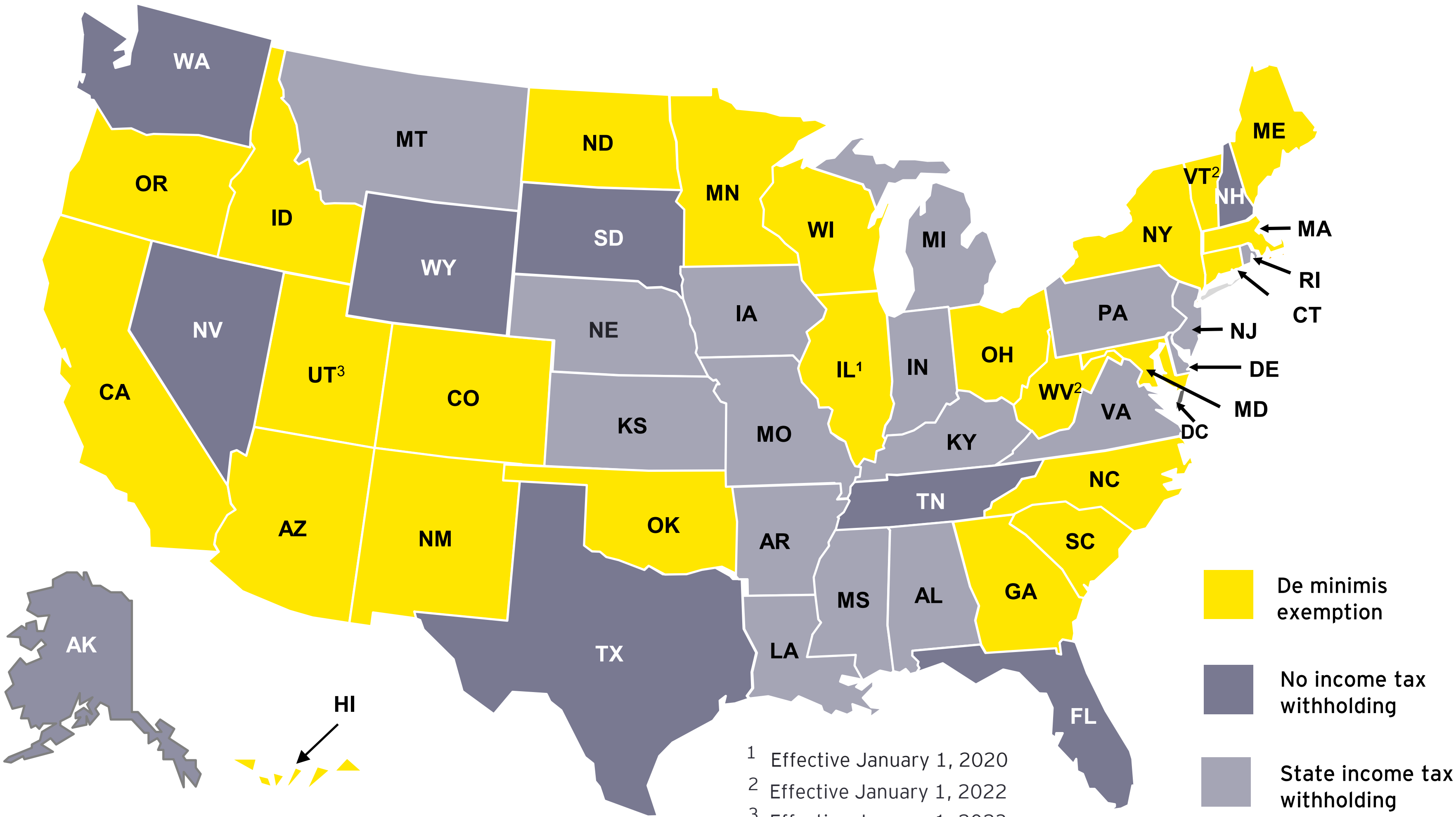
State nonresident income tax de minimis exceptions



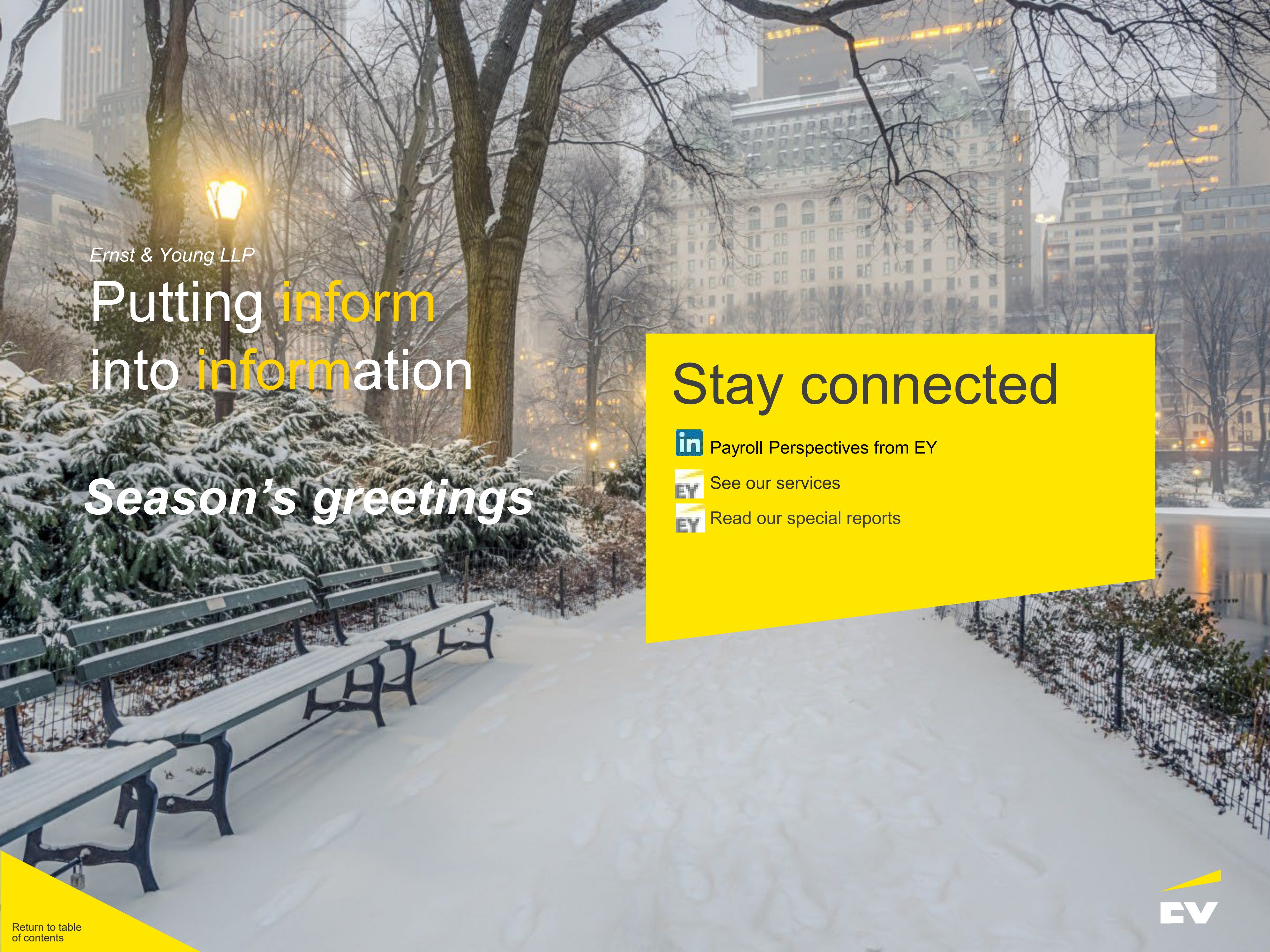
1 Effective January 1, 2020
2 Effective January 1, 2022
3 Effective January 1, 2023

State income tax reciprocal agreements

- Some states have entered into reciprocal agreements (usually with bordering states) where nonresident state income tax is not required. Instead, income tax and income tax withholding are required only in the resident state
  - **Example:** Under Indiana's reciprocal agreement, income tax withholding is not required for services performed in the state by residents of Kentucky, Michigan, Ohio, Pennsylvania and Wisconsin if employees have properly completed and filed Indiana Form WH-47 with the employer
- Generally, the exemption from nonresident income tax under a reciprocal agreement doesn't apply unless the employee files the required certificate with the employer (usually, a certificate of nonresidence)

States (and District of Columbia) that have entered into reciprocal agreements with some other states

District of Columbia	Montana
Illinois	New Jersey
Indiana	North Dakota
Iowa	Ohio
Kentucky	Pennsylvania
Maryland	Virginia
Michigan	West Virginia
Minnesota	Wisconsin



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EY | Building a better working world

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