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Top stories

US employment tax rates and limits for 2023

Our annual report of employment tax rates and limits has been updated through February 25, 2023, to reflect numerous changes to the state income tax withholding and state unemployment insurance sections.

—[Download the latest report](#)

Massachusetts conforms to federal tax treatment of many fringe benefits

Due to [legislation](#) enacted as part of the Massachusetts fiscal year (FY) 2023 budget, the Massachusetts Department of Revenue issued Technical Information Release (TIR) [23-5](#) on March 1, 2023, explaining the state's tax treatment of certain fringe benefits which, retroactive to January 1, 2022, conform to the Internal Revenue Code (IRC) as amended on January 1, 2022. Prior to the passage of the FY 2023 budget, Massachusetts law (Section 62) generally conformed to the IRC as amended on January 1, 2005. *(For all differences between federal and Massachusetts tax law as of January 1, 2022, see the state's [website](#).)*

The fringe benefits affected include (1) an employer's payment of employee student loan principal and interest, (2) employer-provided transportation fringe benefits, (3) qualified moving expense reimbursements, (4) the business expenses deduction for pretax contributions made for qualified transportation benefits, and (5) employer-provided adoption assistance.

—[Read more about this development in Tax Alert 2023-0236](#)

West Virginia law lowers personal income tax rates retroactive to January 1, 2023

West Virginia Governor Jim Justice [announced](#) that the legislature joined in his call for the largest tax cut in the state's history by passing [H.B. 2526](#). The bill was signed into law on March 7, 2023, in a [ceremonial event](#). Under H.B. 2526, the top income tax rate is lowered to 5.12% from 6.5% and the lowest tax rate drops to 2.36% from 3%, retroactive to January 1, 2023.

—[Read more about this development in Tax Alert 2023-0439](#)

The West Virginia State Tax Department has issued updated 2023 withholding tables/formulas for immediate use by employers.

—[Read more about this development in Tax Alert 2023-0527](#)

Federal developments

IRS regulations lower electronic filing threshold for Forms W-2/1099

In final regulations ([TD 9972](#)), the IRS amended the rules for electronically filing certain returns (e.g., Forms W-2/1099) to reflect changes made by the Taxpayer First Act of 2019 (TFA), which reduced the threshold for requiring taxpayers to file electronically in most cases from 250 annual returns to 10.

The 10-return threshold applies to returns required to be filed in calendar years 2024 and later. The 250-return threshold applies to returns filed in calendar years 2022 and 2023.

The regulations affect partnership returns, corporate income tax returns, unrelated business income tax returns, withholding tax returns, and registration statements, disclosure statements, notifications, actuarial reports and certain information and excise tax returns.

—[Read more about this development in Tax Alert 2023-0356](#)

State income tax withholding

Arizona requires that all employees complete Form A-4 for 2023

The Arizona Department of Revenue has [announced](#) that a revised Form A-4 applies effective January 31, 2023, to take into account the new flat tax of 2.5% effective January 1, 2023, under [SB 1828](#).

—[Read more about this development in Tax Alert 2022-1645](#)

The Department further [instructed](#) every Arizona employer to provide to their employees by January 31, 2023, the 2023 Form A-4, which employees must complete and submit to their employers. (See *the top of the 2023 Form A-4*.)

—[Read more about this development in Tax Alert 2023-0154](#)

Idaho to update 2023 withholding tables in July to reflect new flat tax

The Idaho State Tax Commission stated that the new flat tax of 5.8% on income over \$2,500 (\$5,000 for married filing jointly) that took effect January 1, 2023, under [H.B.1](#) will be reflected in its annual withholding formula revisions that are published before July 1 each year, delaying issuance of the updated 2023 withholding formula by six months.

—[Read more about this development in Tax Alert 2023-0182](#)

Kentucky law lowers personal income tax rates for 2023 and 2024 and removes triggers for future rate cuts

On February 17, 2023, Kentucky Governor Andy Beshear signed into law [H.B.1](#), which lowers the state personal income tax rate to 4.5% retroactive to January 1, 2023, and to 4% effective January 1, 2024. H.B. 1 has no impact on the current 2023 tax rate of 4.5%, but rather removes the provision that would allow for future rate cuts contingent on meeting certain benchmarks.

—[Read more about this development in Tax Alert 2023-0486](#)

New Hampshire law prohibits out-of-state income tax on resident remote workers

New Hampshire Governor Chris Sununu signed into law [H.B. 1097](#), which declares that income earned or received by New Hampshire residents for services performed entirely within the state shall not be subject to the personal income tax of any other state.

The law is primarily intended to protect New Hampshire teleworkers from nonresident states that require income tax and withholding regardless of the physical work location if the employee works for an employer within the nonresident state (i.e., convenience of the employer rule).

—[Read more about this development at Tax Alert 2023-0334](#)

State unemployment insurance

Iowa law makes many changes to lower future SUI tax rates, wage base increases

The Iowa legislature made many changes to the state's unemployment insurance law to potentially lower future state unemployment insurance (SUI) tax rates, including reducing the number of unemployment insurance (UI) benefit weeks available from 26 to 16. Due to this 2022 legislative action, the SUI tax rates for 2023 range from 0% to 7%, a decrease from the 2022 rates of 0% to 7.5%. The Iowa Workforce Development Department (IWD) [announced](#) that the state unemployment insurance (SUI) taxable wage base will increase to \$36,100 for calendar year 2023, up from \$34,800 for 2022.

The law also allows employers to seek refunds for overpayments of unemployment insurance (UI) benefits even when they failed to timely respond to UI benefit claims due to insufficient notification.

—[Read more about this development in Tax Alert 2023-0285](#)

Oklahoma SUI tax rates unchanged for 2023 but wage base increases; law reduces UI benefit weeks starting in 2023

The Oklahoma Employment Security Commission (OESC) announced that the SUI tax rates will range from 0.3% to 9.2% on the highest rate schedule allowed by law (State Experience Factor 50% and Conditional Factor D). Conditional factors apply when the state's unemployment insurance (UI) trust fund falls to a certain level. The rate for new employers continues at 1.5%. The 2023 SUI taxable wage base is \$25,700, up from \$24,800 in 2022.

—[Read more about this development in Tax Alert 2023-0425](#)

Local payroll tax

St. Louis payroll earnings tax does not apply to remote work outside the city, Missouri Circuit Court rules

In January 2023, the Missouri Circuit Court, 22nd judicial circuit, decided in *Boles v. City of St. Louis* that employees who lived and worked outside of St. Louis are entitled to a refund of the St. Louis payroll earnings taxes withheld from their pay because the tax applies only to days of work physically performed within the city. The decision applies to earnings taxes withheld in 2020 and beyond.

—[Read more about this development in Tax Alert 2023-0351](#)

Other payroll developments

Philadelphia requires employers to provide transportation benefits starting in 2023

Effective December 31, 2022, a Philadelphia ordinance ([Bill No. 22033701](#)) requires employers with 50 or more covered employees to provide mass transit or bicycle commuter benefits to covered employees under its new Employee Commuter Transit Benefit Program.

—[Read more about this development in Tax Alert 2023-0471](#)

Bill watch (bills introduced but not yet enacted)

Kansas

H.B. 2420	Status: Referred to House Committee on Taxation, 2-15-2023	Topic: Nonresident income tax, de minimis exemption
Would establish a 30-day safe harbor before nonresident employees traveling into the state for work duties are subject to income tax in Kansas and their employers to corresponding withholding obligations. This safe harbor would be available only if the nonresident's work state offers a substantially similar 30-day threshold and related provisions.		

New York

Assembly Budget Proposal	Status: Introduced 3-13-2023	Topic: Income tax, Metropolitan commuter transportation mobility tax
Would increase the current 10.3% personal income tax rate to 10.8% for taxpayers earning between \$5 million and \$25 million and increase the current 10.9% to 11.4% for taxpayers earning over \$25 million. The Assembly proposal does not include the Executive proposal to increase the top Metropolitan commuter transportation mobility tax, from 0.34% to 0.50%, for certain businesses in the Metropolitan Commuter Transportation District with quarterly payroll expenses of more than \$437,500.		

Minnesota

SF 2346	Status: referred to Taxes, 3-1-2023	Topic: Nonresident income tax, de minimis exemption
Would establish a 30-day safe harbor before nonresident employees traveling into the state for work duties are subject to income tax in Minnesota and their employers to corresponding withholding obligations. This safe harbor would be available only if the nonresident's work state offers a substantially similar 30-day threshold and related provisions.		

Montana

H.B. 447	Status: Passed House committee 2-24-2023, Senate hearing 3-17-2023	Topic: Nonresident income tax, de minimis exemption
Would establish a 30-day safe harbor before nonresident employees traveling to the state for work are subject to income tax in Montana and their employers to corresponding withholding obligations. Would also include a "key employee" exception for employees who earn over \$500,000 in compensation in the prior year.		

Nebraska

LB 416	Status: Notice of hearing 2-15-2023	Topic: Nonresident income tax, convenience of the employer rule
Would not impose the convenience of the employer rule unless the employee is present in Nebraska for more than 30 days in the tax year. The proposal is supported by the Council on State Taxation.		

Nebraska

L.B. 173	Status: Notice of hearing 2-23-2023	Topic: Nonresident income tax, de minimis exemption
Would establish a 30-day safe harbor before nonresident employees traveling into the state for work duties are subject to income tax in Nebraska and their employers to corresponding withholding obligations.		

This month's insights

Missouri's unique requirement when computing nonresident income tax withholding

It is a general rule of thumb that nonresident income tax applies only to those wages paid for services provided in the nonresident state. The provision is automatic, meaning the employee does not need to file a special form to prevent withholding on all earned wages, regardless of where services are performed.

The following standard exceptions apply:

- **Reciprocal agreements.** Where there is a reciprocal agreement between the nonresident and resident states, nonresident income tax withholding is not required provided the employee files a certificate of nonresidence.
- **Convenience of the employer rule.** Some states require nonresident income tax withholding on all wages, regardless of where the services were performed, if the employee's out-of-state work is for the employee's own convenience rather than the necessity of the employer.
- **De minimis exception.** Twenty-seven states do not require nonresident income tax withholding for short stays and/or low annual earnings.

Missouri is another exception to the general rule of thumb. Under Missouri tax law (which contains none of the above standard exceptions), if a nonresident performs services partly within and partly without the state, only wages paid for services performed within Missouri are subject to Missouri income tax withholding, provided the employee files with the employer a [Form MO W-4A, Certificate of Nonresidence or Allocation of Withholding Tax](#). (2023 State of Missouri Employer's Tax Guide, [p. 4](#).)

Key takeaway



While many states follow the same approach to nonresident income tax withholding, it is important not to make assumptions. Instead, conduct a careful review of the state rules with your employment tax advisor.

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