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Michigan Department of Treasury clarifies Detroit income tax liability for remote workers and employer withholding liability during the COVID-19 emergency and beyond

- *The Michigan Department of Treasury, which administers Detroit's income tax, has issued clarifying guidance concerning a remote worker's liability for Detroit income tax when working outside the city, including for the period of the COVID-19 emergency.*
- *Many employers, uncertain of how long employees would need to work remotely during the COVID-19 emergency, continued to withhold Detroit income tax on compensation earned outside of the city from Detroit-based employers, which was exempt from the tax.*
- *Treasury now reports an influx of refund requests from nonresidents, many of them filed incorrectly.*

The Michigan Department of Treasury (Treasury), [which administers](#) the Detroit income tax, has published guidance clarifying remote workers' liability for the city tax, employers' withholding obligations during and after the COVID-19 emergency and how to request a refund if necessary. ([Michigan Department of Treasury Update, February 2023.](#))

General requirements

Detroit imposes an income tax of 2.4% on residents and 1.2% on nonresidents under MCL 141.61 and MCL 141.613, respectively. The law requires that an employer doing business or maintaining an establishment within the city withhold from each payment to its employees the Detroit income tax owed on their taxable compensation, after taking into account exemptions as reported on [Form 5527, Employee's Withholding Exemption Certificate for the City of Detroit \(DW-4\)](#).

Detroit residents

For resident employees, the employer must generally withhold tax from all taxable compensation, no matter where earned.

Detroit nonresidents

For nonresident employees, the employer must generally withhold on compensation paid to the employee only for work done or services performed in Detroit. Nonresidents are liable for nonresident income tax on compensation for work performed in Detroit, income from certain business activities and certain net capital gains. (MCL 141.651.)

Withholding practices during the COVID-19 emergency

During the COVID-19 emergency, some employees of Detroit-based companies temporarily worked remotely outside of Detroit. Due to uncertainty as to how long the remote work would continue, many employers continued withholding as if remote employees were still working in Detroit. In many cases, this resulted in nonresidents having more withholding than was necessary.

According to the update, the Treasury has experienced an influx of requests for refunds from employees who temporarily worked outside of Detroit during the COVID-19 emergency and many of those refund requested were not submitted correctly.

Procedures for requesting refunds of Detroit income tax withholding

- Nonresidents with taxable income or withholding must file the *City of Detroit Nonresident Income Tax Return* ([Form 5119](#)) with the Treasury.
- Part-year residents with taxable income or withholding must use *City of Detroit Part-Year Resident Income Tax Return* ([Form 5120](#)).
- Nonresidents and part-year residents with compensation or withholding must also file *City of Detroit Withholding Tax Schedule, City Schedule W* ([Form 5121](#)) and report in Part 1, Box 1, the amount subject to federal income tax of W-2 wages and other compensation or 1099 income from which tax was withheld.
- Nonresidents or part-year residents who performed work outside of Detroit must allocate their compensation (excluding commissions) by days worked inside and outside Detroit by using Part 3 of Form 5121.

The above steps are required even if the nonresident who had withholding did not work in Detroit at all. Nonresidents must allocate compensation or 1099 income earned in Detroit from Part 3, column H on the annual return as taxable "Wages, salaries, tips, etc."

According to the update, the Treasury received many annual returns that either reported the full amount of compensation instead of the "earned in Detroit" amount from Form 5121, Part 3, column H, or reported less than 100% of compensation as taxable on the annual return with Form 5121 Part 3 incomplete. "Both situations may cause taxpayers to receive reduced refunds or bills for tax due," according to the update.

Nonresident or part-year residents who filed their annual returns incorrectly should amend their annual returns by using the same forms originally used, checking the box on page 1, and including the reason for the amendment and all supplemental forms.

If Form 5121 was not fully or correctly completed, but the annual return does not have to be corrected, the filer may send a corrected Form 5121 directly to:

Michigan Department of Treasury City Tax Administration
P.O. Box 30741 Lansing,
MI 48909

Taxpayers that receive a notice of adjustment or assessment should follow the instructions and call the number on the notice with any questions.

Taxpayers should preserve their appeal rights if they disagree with any adjustments and note that an informal conference with Treasury's Hearings Division is free.

Taxpayers that wish to appeal to the Michigan Tax Tribunal should see www.michigan.gov/taxtrib for more information.

Correcting excess withholding for future returns

Detroit nonresidents who estimate going forward that any percentage of their work will be in Detroit can adjust their withholding on Form 5537, provide it to their employers and update it as necessary. (*MCL 141.654 and 655.*) For more information see Detroit's [frequently asked questions](#) for telecommuters and the [City of Detroit Income Tax Withholding Guide](#).

Ernst & Young insights

Employers that continued to withhold Detroit income tax from wages earned for remote work outside the city might consider sharing this Alert with their employees who are having difficulties receiving refunds of excess withholding.

Going forward, employers should carefully monitor employee work locations, and withhold Detroit income tax only for wages paid for services physically provided within the city.

Contact us for more information

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