



EY Payroll NewsFlash

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Indiana law gives nonresident income tax and withholding relief for short-term business travelers and their employers

On May 4, 2023, Indiana Governor Eric Holcomb approved [SB 419](#), which, effective January 1, 2024, exempts from Indiana adjusted gross income compensation received by nonresident employees (other than professional athletes and public figures) for services they provide within Indiana for 30 days or less during the calendar year.

The exemption applies only if employees were not Indiana residents at any time during the calendar year.

If employment within Indiana exceeds 30 days in the calendar year, all compensation is included in Indiana adjusted gross income, including compensation for the first 30 days of employment.

Income tax withholding

The Indiana Department of Revenue will not impose penalties for an employer's failure to withhold nonresident income tax from compensation earned for less than 30 days in the calendar year provided one of the following applies:

- The employer maintained and relied on a time and attendance system specifically designed to allocate employee wages for income tax purposes among all taxing jurisdictions where the employee provided services for the employer.
- The employer did not maintain a time and attendance system, but instead relied on the employee's annual determination of the time the employee expected to spend performing employment duties in Indiana. The employer must not have actual knowledge of fraud on the part of the employee in making the determination and the employer and the employee must not have colluded to evade taxation in making the determination.

Rules for counting 30 days

Employees are considered present and performing employment duties within Indiana if they perform more of their employment duties within Indiana than in any other state during a particular day.

- Any portion of the day during which employees are in transit is not considered in determining the location of employees' performance of their employment duties.
- If employees perform their employment duties in their state of residence and in only one nonresident state during a particular day, the employees are considered to have performed more of their employment duties in the nonresident state than in the state of residence for that day.

If an individual performs substantially similar job duties for an employer during a calendar year while designated both as an employee or in a capacity other than as an employee, the number of days considered worked in Indiana must be aggregated, without regard to the individual's designation as other than an employee.

Convenience of the employer rule does not apply

The law makes clear that if an employee is working at a location other than a physical location of the employer, "the employee is considered to be working in the state or states in which the services for the employer are performed, regardless of the physical location of the employer."

Indiana local taxes

The law stipulates that the state's 30-day nonresident income tax exemption does not alter the application of Indiana local tax and withholding obligations.

Ernst & Young LLP insights

Indiana is now one of 28 states that makes a de minimis exception to the nonresident income tax withholding requirement based on days or earnings.

States vary in their approach to this provision. For instance, New York's 14-day rule applies only to income tax withholding and not to the income tax obligation, and some states (e.g., Louisiana) require that the employee provide the employer with a certificate of nonresidence for the exemption to apply. (See *the "insights" section of our March 2023 issue of [Payroll Month in Review](#)* for more information about nonresident income tax exceptions.)

Employers should review their state and local nonresident income tax withholding obligations with an employment tax advisor to confirm compliance and reduce their potential for underwithholding and reporting risks.

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