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

On May 18, 2023, Montana Governor Greg Gianforte approved H.B.447, which, effective January 1, 2024, exempts from Montana source income compensation received by nonresident employees (with the exceptions noted below) for services they provide within Montana for 30 days or less during the calendar year.

The exemption applies only if employees performed employment duties in more than one state during the calendar year.

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

Key employee and other exceptions

HB 447 uniquely excludes key employees from the 30-day safe harbor. A key employee is defined as "an individual who, for the year immediately preceding the current tax year, had annual compensation from the employer of greater than $500,000."

Other individuals also excluded from the safe harbor include:

- Professional athletes or members of professional athletic teams
- Professional entertainers who perform services in the professional performing arts
- Persons of prominence who perform services for compensation on a per-event basis
- Persons who receive lottery winnings on lottery tickets purchased in Montana
- Persons who perform construction services to improve real property, predominantly on construction sites, as laborers
- Qualified production employees

Income tax withholding

Provided one of the following applies, the Montana Department of Revenue will not impose penalties for an employer's failure to withhold nonresident income tax if the error was due to miscalculating the number of days nonresident employees were present in Montana:

- The employer relied on a regularly maintained time and attendance system that required employees to record, on a contemporaneous basis, their work location each day they were present in a state other than their state of residence (or where services were performed for state unemployment insurance purposes) and the system was used by the employer to allocate employees' wages between all taxing jurisdictions where employees performed their duties.

- The employer did not maintain a time and attendance system, but instead relied on employee travel records that the employer required be maintained and recorded on a regular and contemporaneous basis.

- The employer did not maintain a time and attendance system but instead relied on travel expense reimbursement records that employees were required to submit on a regular and contemporaneous basis.

Rules for counting 30 days

If nonresident employees are present in Montana for any part of a day, they are considered present for that entire day unless their presence is solely for purposes of transit through Montana.

Other Montana taxes

The law stipulates that the state's 30-day nonresident income tax exemption does not alter the application of other Montana taxes.

Ernst & Young LLP insights

Montana is now one of 29 states that makes a de minimis exception to its nonresident income tax withholding requirement based on days or earnings. Recently, Indiana legislation was enacted, which, effective January 1, 2024, allows for a 30-day de minimis exception to its nonresident income tax and withholding requirements. (*See EY Tax Alert 2023-0871*.)

As Montana's unique key employee exclusion demonstrates, states vary in their approach to the nonresident income tax safe harbor. For instance, New York's 14-day rule and Vermont's 30-day rule apply 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.

Contact us for more information

Workforce Tax Services - Employment Tax Advisory Services

Kristie Lowery
kristie.lowery@ey.com

Ken Hausser
Kenneth.hausser@ey.com

Gino Petrozzi
gino.petrozzi@ey.com

Debera Salam
debera.salam@ey.com