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 Top stories

New Jersey implements "convenience of the employer rule" for certain nonresident employees, provides tax incentives to certain taxpayers and businesses

On July 21, 2023, New Jersey Governor Phil Murphy signed into law [A.4694](#), which, retroactive to January 1, 2023, establishes a "convenience of the employer rule," subjecting New Jersey nonresidents assigned to work primarily for a New Jersey employer to New Jersey state income tax and withholding. The law applies only to New Jersey nonresidents who are residents of states that also have a convenience of the employer rule.

—[Read more about this development in EY Tax Alert 2023-1291](#)

Vermont law imposes new childcare tax to be paid by employers and employees effective July 1, 2024

On June 20, 2023, the Vermont House and Senate overrode Vermont Governor Phil Scott's veto of [H. 217](#) which, effective July 1, 2024, imposes a new childcare tax of 0.44% on wages and 0.11% on self-employment income. The tax will be administered by the Vermont Department of Taxes.

—[Read more about this development in EY Tax Alert 2023-1338](#)

EY special report provides the latest information about required state unemployment posters and employee notices

Most states require that employers tell employees about their potential eligibility for unemployment insurance benefits. There are two forms of communications that most states require—a notice to an employee at the time of separation and/or a poster placed in a conspicuous location in the workplace.

This special report contains the results of our March 2023 survey of state workforce agency websites and includes links, if applicable, to the states' employee separation notice, workplace poster and the authority governing these requirements.

—[Download the 2023 report](#)

US employment tax rates and limits

Our 2023 edition of US employment tax rates and limits includes, as of May 25, 2023, the following:

- Social Security wage base for 2023
- Qualified pension plan limits for 2022 and 2023
- Health Savings Account limits for 2022 and 2023
- Fringe-benefit inflation adjustments and Form W-2 penalties for 2023
- Federal mileage rates and luxury vehicle limits for 2023
- Per diem rates under high-low substantiation method for 2023
- 2021 and 2022 FUTA credit reduction
- State unemployment insurance wage bases and tax rates for 2023
- Disability and paid family leave insurance wage base and rates for 2023
- Federal income tax withholding for 2023
- State income tax withholding tables, supplemental withholding and the highest withholding tax rates for 2023

—[Download the latest report](#)

Federal developments

Form I-9, *Employment Eligibility Verification* is updated

The US Department of Homeland Security (DHS) and US Immigration and Customs Enforcement (ICE) have announced an optional procedure as an alternative to the in-person physical examination of documentation required to complete the Form I-9, *Employment Eligibility Verification*. The optional procedure may be used by qualifying US employers beginning August 1, 2023. In connection with this procedure, US Citizenship and Immigration Service (USCIS) has introduced a new version of Form I-9 with a version date of "(Rev. 08/01/23)" that is also effective August 1, 2023. US employers may continue to use the previous version of Form I-9 (Rev. 10/21/19) until October 31, 2023.

—[Read more about this development in EY Tax Alert 2023-1337](#)

IRS issues final regulations on recapture of excess employment tax credits

The IRS has issued final regulations under IRC Sections 3111 and 3221 ([TD 9978](#)) authorizing the assessment of any erroneous refund of the credits paid under the Families First Act, including any increases in these credits under the CARES Act. The final regulations adopt, with a minor modification, temporary and proposed regulations (see *Tax Alert 2020-1907*).

—[Read more about this development in TD 9978](#)

State income tax withholding

Alabama temporarily exempts mandatory overtime pay from state personal income tax

Alabama Governor Kay Ivey approved [HB 217](#), which, effective January 1, 2024 and through June 30, 2025, exempts from wages subject to state income tax and withholding the compensation required to be paid to employees for hours worked over 40 per week under the federal [Fair Labor Standards Act](#) (FLSA).

—[Read more about this development in EY Tax Alert 2023-1282](#)

State unemployment insurance

Georgia law temporarily lowers new employer SUI rate and reinstates administrative assessment

Georgia Governor Brian Kemp approved legislation ([SB 160](#)) that temporarily lowers the state unemployment insurance (SUI) tax rate for new employers from 2.7% to 2.64% and reinstates the 0.6% administrative assessment.

—[Read more about this development in EY Tax Alert 2023-1258](#)

Local developments

Arkansas law prohibits localities from levying a tax on income

Governor Sarah Huckabee Sanders signed into law [HB 1026](#), which prohibits counties, municipalities and other local governments from levying a tax on income. Under prior law, an Arkansas locality could impose an income tax if approved by a majority of its voters.

—[Read more about this development in EY Tax Alert 2023-1208](#)

Missouri Supreme Court declines to hear case on whether class action suit may be brought by St. Louis teleworkers owed earnings tax refunds

On July 20, 2023, the Supreme Court of Missouri [declined to hear](#) a request for class action certification in *Boles v. City of St. Louis* before the Missouri Court of Appeals had a chance to do so. The case was brought by employees seeking refunds of the 1% St. Louis earnings tax that was withheld from their wages during the COVID-19 emergency when they were working remotely outside of the city. (*Boles v City of St. Louis: Cause No. 2122-CC00713.*)

—[Read more about this development in EY Tax Alert 2023-1314](#)

Other payroll developments

Maine law establishes state paid family and medical leave program with contributions starting in 2025

On July 11, 2023, Maine Governor Janet Mills signed into law [SP 800](#), which establishes a state paid family and Medical leave (PFML) program. Employers will begin collecting the premium effective January 1, 2025, and PFML benefits will begin May 1, 2026. The program will be administered by the Maine Department of Labor. (*Maine Department of Labor [website.](#)*)

—[Read more about this development in EY Tax Alert 2023-1317](#)

Vermont continues to accept relocation grant applications for employees moving to the state

Employees who have recently moved, or plan to move to Vermont, may still be eligible for a relocation expense reimbursement grant of up to \$7,500 through the state's "ThinkVermont" [Worker Relocation Incentive](#) program. The program was funded by a one-time allocation of \$3.09 million from the state's legislature and is available to two types of workers – new relocating workers and [new remote workers](#).

—[Read more about this development in EY Tax Alert 2023-1271](#)

Bill watch (tracking the status of legislation proposed in 2023)

Alabama

HB 217	Status: Passed House and Senate, 6-6-2023. Became law 6-6-2023 (See <i>Tax Alert</i> 2023-1282)	Topic: Wages subject to state income tax
Would exempt overtime pay for hours worked over 40 hours per week from state income tax.		

Alabama

SB 65	Status: Read second time in House of Origin, 3-21-2023; indefinitely postponed, 5-31-2023 (legislature adjourned 6-14-2023) Bill did not pass before session adjournment	Topic: Local tax rate control, make clear local tax applies only for work carried on within the locality (convenience of the employer rule)
Would have done the following: reduce any municipal occupational license tax greater than 1% based on an annual reduction in the tax until the tax would be 1%; provide that any occupational license tax levied by any municipality does not apply to any person performing an occupation in the police jurisdiction of the municipality or on any property annexed into the municipality after January 1, 2023; provide for a referendum under certain conditions in certain counties in which two or more municipalities levied an occupational tax greater than 1% on January 1, 2023; prohibit a municipality from levying a new occupational license tax or increasing the rate of any existing municipal occupational license tax; provide for certain exceptions from any occupational taxes for certain temporary workers and for severance pay; specify the power of a municipality pursuant to Section 11-51-90 of the Code of Alabama 1975, to license an exhibition, trade, business, vocation, occupation, or profession only within the corporate limits and jurisdiction of the municipality, provide for refunds and collections of the license fees and taxes, and provide that these provisions are retroactive and declaratory of existing law.		

Georgia

SB 160	Status: Approved by Governor, May 1, 2023 (See <i>Tax Alert</i> 2023-1258)	Topic: Unemployment insurance tax rates
Changes the unemployment tax rate for new employers to 2.64% through 2026, increasing to 2.7% after 2026. Institutes a 0.06% administrative assessment tax in effect from 2024 through 2026 that applies to new employers and employers with an experience rating; however, reimbursing employers and those employers paying the minimum or maximum unemployment tax rate are subject to the assessment. The administrative assessment is not reported as contributions on the Form 940 and is repealed entirely effective January 1, 2027.		

Illinois

HB 3129	Status: Sent to Governor June 15, 2023. Becomes law automatically 60 days from June 15, 2023 (legislature adjourned May 26, 2023)	Topic: Equal Pay Act wage transparency
Would expand the state's current Equal Pay Registration Certificate process by requiring that Illinois employers with more than 15 employees include pay scale and benefits in all open job postings.		

Indiana

SB 419	Status: Approved by Governor, May 4, 2023 (See <i>Tax Alert</i> 2023-0871)	Topic: Nonresident income tax, de minimis exemption
Simplifies individual income tax filings and reduces employers' withholding and reporting burdens related to employees working less than 30 days in Indiana.		

Kansas

H.B. 2420	Status: Referred to House Committee on Taxation, 2-15-2023 (legislature adjourned) Bill did not pass before session adjournment	Topic: Nonresident income tax, de minimis exemption
Would have established 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 have been available only if the nonresident's work state offered a substantially similar 30-day threshold and related provisions.		

Maine

LD 1638	Status: (legislature adjourned June 21, 2023) Bill did not pass before session adjournment	Topic: State personal income tax rate decrease
Would have reduced the state's individual income tax rates for tax years 2023 and 2024 from 5.8%, 6.75% and 7.15% to 5.2%, 6.3% and 7.05%, respectively. Starting with the 2025 tax year, the rates would have been reduced to 5%, 6% and 7%, respectively.		

Maine

LD 1946	Status: Referred to Committee on Taxation voted Ought Not to Pass , 5-31-2023 (legislature adjourned June 21, 2023)	Topic: Expand the state personal middle income tax bracket
Would have, effective January 1, 2023, increased the taxable income subject to the 6.75% and 7.15% tax rates.		

Maryland

S.B. 828	Status: Approved by Governor, 5-3-2023 (See <i>EY Tax Alert</i> 2023-1029)	Topic: Paid family and medical leave insurance
Delays the start date for employer/employee contributions to the state paid family and medical leave insurance plan from October 1, 2023, to October 1, 2024; prohibits a total contribution rate of more than 1.2% to be paid 50% by employers and employees; changes the definition of taxable wages.		

Minnesota

SF 2346	Status: Referred to Taxes, introduction and first reading, 3-1-2023 (legislature adjourned May 22, 2023) Bill did not pass before session adjournment	Topic: Nonresident income tax, de minimis exemption
Would have established 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 have been available only if the nonresident's work state offered a substantially similar 30-day threshold and related provisions.		

Minnesota

H.F. 442	Status: Introduction and first reading, referred to Taxes, 1-17-2023 (legislature adjourned May 22, 2023) Bill did not pass before session adjournment	Topic: State personal income tax rate increase
Effective retroactive to January 1, 2023, would have established a new tax rate of 10.85% on incomes over \$600,000 for single filers; over \$800,000 for heads of household; and over \$1 million for joint filers. The bill would also have raised the income thresholds for the existing income tax brackets for all filers.		

Minnesota

HF 2	Status: Approved by Governor 5-25-2023 (See <i>Tax Alert</i> 2023-1111)	Topic: State paid family and medical leave insurance
Establishes a state paid family and medical insurance program with contributions and benefits beginning January 1, 2026, with employer quarterly wage detail reports starting July 1, 2025. The premium rate is 0.7% for an employer participating in both family and medical benefit programs; 0.4% for an employer participating in only the medical benefit program with an approved private plan for the family benefit program; and 0.3% for an employer participating in only the family benefit program with an approved private plan for the medical benefit program. Contributions are paid up to the Social Security wage limit; however, small employers pay at a lower wage limit based on number of employees. Employers may deduct up to 50% of the contributions from employees' wages.		

Minnesota

SF 3035	Status: Approved by Governor 5-24-2023 (See <i>Tax Alert</i> 2023-1088)	Topic: Earned sick and safe leave (ESSL)
Effective January 1, 2024, provides covered employees up to 48 hours of earned ESSL for a variety of purposes. The state earned sick and safe leave law does not preempt local ESSL laws.		

Montana

H.B. 447	Status: Approved by Governor, 5-18-2023 (See <i>Tax Alert</i> 2023-0919)	Topic: Nonresident income tax, de minimis exemption
Establishes 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. The provision includes 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 (legislature is adjourned) Bill did not pass before session adjournment	Topic: Nonresident income tax, convenience of the employer rule
Would only have imposed the convenience of the employer rule if the employee was present in Nebraska for more than 30 days in the tax year.		

Nebraska

L.B. 173	Status: Notice of hearing 2-23-2023 (legislature is adjourned) Bill did not pass before session adjournment	Topic: Nonresident income tax, de minimis exemption
Would have established a 30-day safe harbor before nonresident employees traveling into the state for work duties were subject to income tax in Nebraska and their employers to corresponding withholding obligations.		

Nebraska

L.B 754	Status: Approved by Governor, 5-31-2023 (See <i>Tax Alert</i> 2023-1362)	Topic: Personal income tax decrease
Collapses the current personal income tax brackets to three and lowers the rates in stages over four years starting in 2024.		

New Jersey

AB 4694/ SB 3128	Status: Approved by Governor, 7-21-2023 (See <i>Tax Alert</i> 2023-1291)	Topic: Convenience of the employer rule
Provides that, retroactive to January 1, 2023, if another state in which an employee resides imposes tax on the income of an employee who works out-of-state for an in-state employer due to the convenience of the employee, that same rule will apply to a person who works for a New Jersey employer but who resides and works outside of New Jersey at the employee's convenience. This means that if an employee's state of residence determines the source of income of nonresidents by a "convenience of the employer test," and the employee works for a New Jersey employer from a location in the employee's state of residence for the employee's own convenience, then the New Jersey employer is required to include those days as days worked in New Jersey and withhold income tax accordingly.		

New York

SB 5572/AB 6796	Status: Passed the Assembly, 6-7-2023. Returned to the Senate, 6-7-2023 (legislature adjourns 12-31-2023)	Topic: Salary threshold for exempt employees
Would raise the salary threshold for salaried-exempt employees from \$900 per week to \$1,300 per week.		

North Carolina

HB 490	Status: Referred to Committee on Finance, 3-28-2023 (legislature adjourns 8-31-2023)	Topic: Wages subject to state income tax
Would exempt certain bonuses and overtime pay for hours worked over 40 hours per week from state income tax.		

Pennsylvania (currently impacts Philadelphia)

S.B. 671	Status: Referred to House finance, 5-5-2023 (legislature adjourns December 31, 2023)	Topic: Convenience of the employer rule
Would prohibit imposing the Philadelphia wage tax on nonresidents working for employers within the city if the employee performs all duties or services outside of the city and makes clear that the tax can only be imposed for services physically provided by nonresidents within the city.		

South Carolina

HB 3450	Status: Referred to Committee on House Ways and Means, 1-10-2023) (legislature adjourned 5-11-2023) Bill did not pass before session adjournment	Topic: Wages subject to state income tax
Would have exempted certain bonuses and overtime pay for hours worked over 40 hours per week from state income tax.		

Vermont

H. 217	Status: Passed by House and Senate, 5/12/2023, House and Senate overrode the Governor's veto, 6-20-22-2023 (See Tax Alert 2023-1338)	Topic: Payroll tax to fund child care
Requires that, effective July 1, 2024, employers pay a Child Care Contribution of 0.44% of covered wages (0.11% of self-employed income). Allows employers to withhold a maximum of 25% of the contribution from employees' wages.		

This month's insights

Exemption from nonresident income tax is not automatic under state reciprocal agreements*

At times employees may regularly commute to nearby states to work. For instance, a New Jersey resident living close to the Pennsylvania border may have regular employment in Pennsylvania. Under normal circumstances, employees are generally subject to resident income tax and nonresident income tax in the state where they work. In this example, and absent a reciprocal agreement, the New Jersey resident would be subject to New Jersey resident income tax on all wages earned, regardless of the state of employment, and to Pennsylvania income tax for the wages earned for work within Pennsylvania.

In consideration of frequent cross-border employment, some states have entered into reciprocal agreements that exempt nonresidents from income tax. For example, Pennsylvania and New Jersey have a reciprocal agreement, which means that when New Jersey residents work in Pennsylvania they pay only New Jersey resident income tax and when Pennsylvania residents work in New Jersey they pay only Pennsylvania income tax.

The exemption from nonresident income tax under a reciprocal agreement is not automatic. Of primary importance, every state and the District of Columbia participating in a reciprocal agreement require nonresidents to complete and submit to their employers a certificate attesting to their nonresident status. For example, Pennsylvania nonresidents must submit [Form REV-419](#) to their employers and New Jersey nonresidents must submit [Form NJ-165](#). (New Jersey Division of Taxation [website](#); [Pennsylvania Employer Withholding Information Guide](#).)

An employer's failure to have the required certificate of nonresidence on file could result in the employer's liability for the nonresident income tax that it did not withhold.

Employers should also be aware of unique requirements under some states' reciprocal agreements. Following are some examples:

- **Illinois.** If a nonresident is paid for performing services within Illinois for more than 30 days, in addition to the [Form IL-W-5NR](#), employees must also complete [Form IL-W-6](#), *Certificate of Days Worked In Illinois for Nonresidents*. ([Publication 130, Who Is Required to Withhold Illinois Income Tax?](#))

- **West Virginia.** The exemption from nonresident income tax under the terms of the state's reciprocal agreement applies only if employees are residents of Kentucky, Maryland, Ohio, Pennsylvania and Virginia and their only source of income is from West Virginia wages or salaries. ([Form WV IT-104NR](#), *Certificate of Nonresidence.*)

Key
takeaways



Employers should identify employees working in nonresident states covered by reciprocal agreements and confirm that they have complied with all of the requirements for exemption from nonresident income tax, including obtaining and retaining the appropriate certificates of nonresidence.

If using a third-party system for collecting and retaining state and local withholding certificates, employers should be certain that required certificates of nonresidence are included, and if not, establish procedures that will further compliance.

*Source: *EY US Payroll Tax Factfinder*. For information on how to purchase [contact us](#).

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