

Management



Tax Concepts



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Travelers Beware — New York Wants to Tax You

Employees required to work in multiple states have to endure all of the hassles associated with travel: tolls, traffic jams, weather delays, waits at airports, and a host of other complications. Now cash-strapped state governments are adding to a traveler's headaches. New increased enforcement initiatives by most states have added a new hassle — taxes. This guest article focuses on New York State, but is relevant to New Jersey firms that send employees into New York.



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A Nonresident's Duty to Pay New York State Income Tax

Nonresidents owe New York State income tax on any items of income or gain derived from or connected with New York sources. Thus, when a nonresident carries on any type of business, trade, profession or occupation within New York, a portion of that income is subject to tax. For example, wages received by a nonresident employee who occasionally comes into New York for work are subject to New York taxes, based on the number of days worked in New York as a percentage of days worked everywhere during the year



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In fact, if a nonresident employee spends *even one day* working in New York State, that employee is technically obligated to pay New York State income tax. This can create a significant tax liability for highly compensated employees such as corporate officers who enter New York State a few times per year for meetings, especially if the executive receives deferred compensation or stock option income. Of course, these situations should not have a substantial overall tax impact because the employees would most likely be afforded a credit by their resident states for the taxes paid to New York.

A problem arises, however, when the employee fails to file New York tax returns for many years. Because no returns were ever filed, there is no statute of limitations protecting the employee from assessments for prior years. On audit, the New York State Department of Taxation and Finance can assess unpaid tax, interest and penalties for any prior year that the employee worked in New York. Unfortunately, the credit offered by the employee's resident state is often limited to the preceding three or four years and the credit will not cover interest or penalties.

Of even greater concern is New York's new Special Investigations Unit — a tax enforcement group that tries to identify situations where people are working in New York State but not paying the appropriate taxes. In some cases, the Tax Department has even threatened *criminal charges* for nonresidents who enter New York State to work and who fail to file tax returns.

Despite the fact that nonresidents must pay tax to New York if they perform services in the State for as little as one day a year, it is interesting to note that employers are not obligated

to withhold tax in such situations. Under New York State's rules, there is a 14-day safe harbor for employers' withholding. In other words, in most cases, an employer is not obligated to withhold tax on an employee's wages if the employee works less than 15 days in New York State in a given year. Moreover, federal law may protect employers from paying New York State corporate income (franchise) tax despite the fact their employees enter the state.

What To Do

Employees who travel to New York for work must be mindful of the tax consequences of their activities. As detailed above, employees should file timely returns and take advantage of tax credits offered by their home states. Additionally, employees with potential liabilities for past years may wish to take advantage of New York's recently-enacted voluntary disclosure program. This program is available to any applicant who is not currently under audit, has not received a bill for the taxes being disclosed on the application and is not under criminal investigation. For qualified taxpayers, New York can agree to limit the look back period to three years, allow taxpayers to pay taxes and interest and agree to waive all penalties, including criminal prosecution. Details of New York's voluntary disclosure program can be found at <http://www.tax.state.ny.us/e-services/vold/default.htm>.

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