Payroll Insights

Employment tax news to guide you now and for the future

May 2022

John Montgomery's fresh take: FUTA credit reductions on state unpaid loans for employers

It's not uncommon for states to turn to the federal government for assistance when trying to cover deficits in their state unemployment insurance ("SUI") trust funds by securing a "Title XII loan," an advance from the Federal Unemployment Trust Fund (FUTA). However, several states are delaying the repayment of billions in Title XII advances. When these advances go unpaid as of January 1 of two or more consecutive years, the state becomes subject to a reduction in FUTA tax credits if the advances are not repaid before November 10 of the tax year. Several states, including California, New Jersey and New York had an outstanding Title XII advance on January 1, 2022. As a result, employers in these states could potentially be subject to a reduction in **FUTA credit** on their 2022 federal Form 940 if the states do not repay their advances by November 1, 2022. The potential 2022 credit reduction for the impacted states is .3% (4.1% for the Virgin Islands). A credit reduction of .3% would increase the maximum FUTA tax per employee from $42 to $63 per year. Understandably, some businesses and lawmakers are not happy, and are pushing back on states who are making the decision to not repay the advances.

IRS releases updated penalty amounts for incorrectly filed information returns

Penalties for failure to file correct information returns and to furnish the correct statements to the payee are adjusted annually. The current penalty rates for tax year 2022 are listed below:

- Failure to file correct information returns
  - If corrected within 30 days of the due date, the penalty is $50 per Form W-2, up to $588,500 ($206,00 for small businesses).
  - If corrected after 30 days, but before August 1, 2022, the penalty is $110 per Form W-2, up to $1,766,000 per year ($588,500 for small businesses)
  - If corrected after August 1, 2022, the penalty is $290 per Form W-2, up to $3,532,500 per year ($1,177,500 for small businesses)

- Failure to furnish correct payee statements
  - This penalty is an additional penalty to the failure to file correct information returns penalty and is applied in the same manner, in the same amounts, based on when the correct statement is furnished to the payee.
- Intentional disregard
  - The penalty for intentional disregard of an employer's obligation to file a correct information return or furnish a correct payee statement remains $580 per return.
- De-minimis error safe harbor
  - If no single error amount differs from the correct amount by $100, and no single amount reported for tax withheld differs from the correct amount by more than $25, the safe harbor rules apply, and the employer is not required to correct Form W-2 to avoid penalties.

The IRS continues to provide updates on the status of processing Forms 941. As of March 23, 2022, the IRS reported that they had 1.9 million unprocessed Forms 941 (down from 2.1 million on March 16, 2022), and 324,000 unprocessed Forms 941-X (up from 316,000 on March 16, 2022).

To help with the backlog and to better serve taxpayers, the IRS announced on March 10, 2022 that they are hiring more than 5,000 positions in its service processing centers in Austin, Texas; Kansas City, Missouri; and Ogden, Utah.

Federal tax deposit schedules

Employers that became semi-weekly depositors for tax year 2022 under the $100,000 next-day deposit rule as a result of the relief provided by Notice 2021-65, may receive a system-generated failure-to-deposit penalty notice if the employer continues to deposit taxes as a monthly depositor in 2022. The employer should contact the IRS to request an abatement of the failure-to-deposit penalty and request to be converted back to a monthly depositor.

IRS suspends mailing certain automated collection notices

The IRS will temporarily stop mailing some automated collection notices until it has worked through their current backlog of unprocessed returns. The IRS will continue to monitor the inventory of prior year returns to determine the right time to resume sending Taxpayer notices.

The suspended notices include Letter 2802C, Notice CP 259, and Notice CP 518. Interest and penalties will continue to accrue for balances that are legitimately due.

Georgia

The Georgia Department of Revenue has issued revised wage bracket and percentage method withholding tables effective for wages paid on or after January 1, 2022. Georgia supplemental tax rates were not changed.

Indiana

The Indiana Department of Revenue replaced Information Bulletin #28, dated November 2016, with an updated Information Bulletin #28, dated February 2022.

The update serves to clarify rules related to income tax withholding, reciprocal agreements and the treatment of income for state and local tax purposes.

Kentucky

Effective for tax year 2022, under H.B. 144, Kentucky has decreased its unemployment-taxable wage base from $11,100 to $10,800, consistent with the wage base that was in effect for 2020 and 2021. Additionally, for tax year 2022, unemployment tax rates should be determined using Schedule A, instead of Schedule C, which was initially in effect for 2022. The unemployment insurance tax rates under Schedule A range from 0.3% to 9%, while the rates for Schedule C range from .5% to 9.5%.

Minnesota

The Minnesota Department of Revenue has issued updated guidance as it relates to state income tax withholding from third-party sick pay. An employer should withhold Minnesota state income tax on third-party sick pay when the employer makes sick leave payments directly to an employee or through an agent. Sick leave payments directly to an employee, or through an agent, should be considered wages and reported on Form W-2 along with the applicable taxes.

If third-party sick pay is paid by a third party, other than an agent, on an employer's behalf, the third party should withhold, report, and remit the applicable taxes.

New York

Senate Bill S8463A, introduced on March 3, 2022, would establish a New York State Worker Opportunity Tax Credit, similar to the federal tax credit. The credit could be used as a refundable credit against income or franchise taxes for employers who hire employees from targeted groups as defined by IRC section 51. The bill would apply to tax years beginning on or after January 1, 2023.

South Carolina

The South Carolina Department of Revenue proposed a draft ruling to end nexus and income withholding relief for employers with remote working employees due to COVID-19 pandemic.

Effective June 30, 2022, if a South Carolina resident earned income outside South Carolina and the wages are subject to withholding in the other state, the resident should not be subject to South Carolina withholding. If a nonresident earned income both in the state and outside of the state, the nonresident is subject to South Carolina withholding only for the wages that are for services physically performed in South Carolina.

Utah

On March 23, 2022, S.B. 39 was signed by Governor Spencer Cox. The new legislation contains certain provisions of the Multistate Tax Commission's model legislation for taxation of certain nonresident employees who are temporarily working in the state of Utah. The new legislation establishes a de-minimis threshold of 20 days per year before a certain nonresident employee's wages become subject to state income tax withholding. The de-minimis threshold should apply to eligible employees who don't have other income from sources in Utah and their home state does not impose a state income tax or provides a "substantially similar exclusion." The new legislation also provides penalty relief for certain employers who fail to register for a state income tax withholding account as a result of the employer erroneously applying the de-minimis threshold.

S.B. 39 will take effect for taxable years beginning on or after January 1, 2023.

West Virginia

Effective for tax year 2022, West Virginia has decreased its unemployment-taxable wage base to $9,000, down from $12,000 in 2021.

Meet one of our Employment Tax professionals: Seth Tawes

Seth is a Senior Associate in KPMG's McLean, Virginia office, with 3 years of employment tax experience and a previous background in asset management. As a senior associate, Seth assists many clients with expatriate payroll reporting, work from anywhere consulting matters, and 1099 reporting compliance. With the continuing changes in Federal and State employment tax laws, Seth is excited to assist clients with all of their employment tax needs.

As someone who grew up near the water, Seth enjoys spending as much time as possible out on the boat with family and friends.

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