Volume 73, No. 9 **04/25/2014**

Payroll Guide

RIA

Highlights

IRS Issues Guidance on How Same-Sex Marriage Ruling Applies to Retirement Plans There are nine Q&As on this topic.

Employers in 15 States Could Pay Higher Federal Unemployment Tax Rates in 2014 Federal loans need to be repaid by Nov. 10, 2014 to avoid the increase.

Employees Can't Voluntarily Forego Overtime As a result, the employer owed them back wages.

IRS Revises Form 941-X and Instructions Some changes have been made to the form.

Employer Not Entitled to Refund on Taxes Paid on Grossed-Up Wages The IRS has issued a Chief Counsel Advice which states that an employer is not entitled to a refund of employment taxes that it intentionally overpaid to avoid penalties after it grossed-up an employee's wages.

Taxpayer Did Not Qualify for "Reasonable Cause" Exception to Failure-to-Deposit Penalty Reliance on a tax professional to prepare and file a tax return is not reasonable cause to abate the penalty.

Tax Professionals May Now View Transcript of Client's Account Online A qualified tax professional who has a Form 8821, *Tax Information Authorization,* on file with the IRS may now request a client's account transcript using the Transcript Delivery System.

Route to: _____

Payroll Guide (USPS 424-120) is published biweekly by Thomson Reuters/RIA, 195 Broadway, New York, NY 10007. Volume 73, No. 9.
Annual subscription rate: $1,045; $350 (newsletter only).
Periodicals postage paid at New York, NY 10007 and additional mailing offices.

Customer Service: 1-800-431-9025.
Postmaster: Send address changes to Payroll Guide, Thomson Reuters Customer Service, 117 East Stevens Avenue, Valhalla, NY 10595-1264.

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IRS Improves Functionality of Online Tax Deposit Calendars Employers may tailor the online tax deposit calendars to meet their own needs.

USCIS Now Has Information Sheet to Help Answer Employees' Form I-9 Questions USCIS has created a one-page information sheet that includes employees' top 12 questions on completing Form I-9.

IRS Issues 2014 Housing Cost Exclusion Amounts for Individuals Working Abroad in High-Cost Areas Individuals who work outside the U.S. and live in certain high-cost areas may be eligible for a higher housing cost exclusion than is generally allowable.

State Highlights A number of states have reported new laws and developments.

IRS Issues Guidance on How Same-Sex Marriage Ruling Applies to Retirement Plans

The IRS has issued a notice that provides guidance on how the Supreme Court's ruling in *United States v. Windsor,* 111 AFTR 2d 2013-2385, applies to retirement plans that are qualified under Code Sec. 401(a) [Notice 2014-19, 2014-17 IRB].

Background. On June 26, 2013, the Supreme Court ruled in *United States v. Windsor* that Section 3 of the *Defense of Marriage Act* (DOMA) is unconstitutional. Section 3 of DOMA defines marriage for purposes of administering federal law as the "legal union between one man and one woman as husband and wife."

In response to the Supreme Court decision, the IRS issued Rev Rul 2013-17, 2013-38 IRB 201, which said that same-sex couples, legally married in jurisdictions that recognize their marriages, will be treated as married for federal tax purposes, regardless of whether the couple lives in a jurisdiction that recognizes same-sex marriage or a jurisdiction that does not recognize same-sex marriage.

The new IRS notice. The new IRS notice has nine Q&As on how the *Windsor* ruling applies to retirement plans. Q&A #2 states that qualified retirement plans must take into account the *Windsor* ruling *as of June 26, 2013.* A retirement plan will not be treated as failing to meet the requirements of Code Sec. 401(a) merely because it did not recognize the same-sex spouse of a participant as a spouse before June 26, 2013. A qualified retirement plan will not lose its qualified status due to an amendment to reflect the *Windsor* ruling for some or all purposes as of a date prior to June 26, 2013, if the amendment complies with applicable qualification requirements (such as Code Sec. 401(a)(4)). The IRS points out in Q&A #3 that recognizing same-sex spouses for all purposes under a plan prior to June 26, 2013, may trigger requirements that are difficult to implement retroactively (such as the ownership attribution rules) and may create unintended consequences.

If a retirement plan for purposes of Code Sec. 401(a) defines a marital relationship by reference to Section 3 of DOMA, or is otherwise inconsistent with: (a) the outcome of the *Windsor* ruling, (b) the guidance in Rev Rul 2013-17, 2013-38 IRB 201, or (c) this new notice, then an amendment to the plan that reflects the outcome of the *Windsor* ruling, the guidance in Rev Rul 2013-17, 2013-38 IRB 201, and this new notice is required by the later of: (i) the otherwise applicable deadline under Section 5.05 of Rev Proc 2007-44, 2007-2 CB 54, or its successor, or (ii) Dec. 31, 2014 (see Q&A #s 5 and 8).

If a retirement plan's terms are not inconsistent with the *Windsor* ruling, the guidance in Rev Rul 2013-17, 2013-38 IRB 201, and this new notice, an amendment to the plan generally would not be required (see Q&A #6). If a plan sponsor chooses to apply the rules in a manner that reflects the outcome of the *Windsor* ruling for a period *before* June 26, 2013, an amendment to the plan that specifies the date as of which, and the purposes for which, the rules are applied is required (see Q&A #7). The amendment to the plan must be made by the later of: (i) the otherwise applicable deadline under Section 5.05 of Rev Proc 2007-44, 2007-2 CB 54, or its successor, or (ii) Dec. 31, 2014.

Employers in 15 States Could Pay Higher Federal Unemployment Tax Rates in 2014

Employers in 15 states (and the Virgin Islands) may not be eligible to claim the maximum amount of state unemployment tax credits on their 2014 federal unemployment (FUTA) tax return, because their state has had an outstanding federal unemployment insurance (UI) loan for at least two years.

Background. Employers pay FUTA tax at a rate of 6.0% on the first $7,000 of covered wages paid to each employee during a calendar year, regardless of when those wages were earned. This tax may be offset by credits of up to 5.4% (known as the "normal credit" and "additional credit") against their FUTA tax liability for amounts paid to a state UI fund by January 31 of the subsequent year (see Payroll Guide at ¶ 4075). The net FUTA tax rate for most employers is 0.6% (i.e., 6.0% – 5.4%).

Under Title XII of the Social Security Act, states with financial difficulties can borrow funds from the federal government to pay UI benefits. If a state defaults on its repayment of the loan, the amount of state UI tax credits that employers in the state may claim is reduced. Employers in credit reduction states pay FUTA tax at a 0.3% rate higher than other employers, beginning with the second consecutive January 1 in which the loan is not repaid by November 10 of that year. For each succeeding year in which there is a balance, the credit is further reduced by an additional 0.3%.

Potential 2014 FUTA credit reduction states. The following states (and the Virgin Islands) will be credit reduction states in 2014, unless they repay their outstanding federal UI loans *by Nov. 10, 2014,* because, according to the Department of Labor, they have had an outstanding federal UI loan for at least two years: Arkansas, California, Connecticut, Delaware, Georgia, Indiana, Kentucky, Missouri, New Jersey, New

York, North Carolina, Ohio, Rhode Island, South Carolina, and Wisconsin.

0.9% credit reduction. Delaware employers face a possible 0.9% credit reduction on their 2014 FUTA tax return (maximum $63 increase per employee) because of their state's failure to repay its outstanding federal loans for four consecutive years.

1.2% credit reduction. Employers in Arkansas, California, Connecticut, Georgia, Kentucky, Missouri, New York, North Carolina, Ohio, Rhode Island, Wisconsin, and the Virgin Islands face a possible 1.2% credit reduction on their 2014 FUTA tax return (maximum $84 increase per employee) because of their state's failure to repay its outstanding federal loans for five consecutive years.

1.5% credit reduction. Employers in Indiana and South Carolina face a possible 1.5% credit reduction on their 2014 FUTA tax returns (maximum $105 increase per employee) because of their state's failure to repay its outstanding federal loans for six consecutive years. However, South Carolina took steps to avoid becoming a FUTA tax credit reduction state in 2013 by repaying some of its federal loan and expects to continue to avoid such a reduction in 2014 as it continues to repay its loan.

Even higher FUTA credit reduction rates. The 2014 FUTA tax rate for employers in Arkansas, California, Connecticut, Georgia, Indiana, Kentucky, Missouri, New Jersey, New York, North Carolina, Ohio, Rhode Island, South Carolina, Wisconsin and the Virgin Islands could even be higher in 2014 than noted above if these jurisdictions are subject to the Benefit Cost Ratio (BCR) add-on. The BCR add-on (see Payroll Guide at ¶ 4075) goes into effect beginning with the fifth taxable year of any succeeding consecutive January 1st that there is a balance due on the federal UI loan. The tax is a complicated calculation that compares the average unemployment benefits that have been paid to the tax effort in the state. If the tax effort has not met a certain level, the BCR add-on is imposed. The Virgin Islands was subject to the BCR add-on in 2012 and 2013. See Payroll Guide Newsletter at ¶ 10.11, for further information on the add-on.

Arizona. Arizona repaid its outstanding federal UI loan in 2013. As a result, the net FUTA tax rate for Arizona employers will be 0.6% (i.e., the rate for employers that are not in credit reduction states) in 2014. Arizona recently took out another federal UI loan, but a spokesperson for the Arizona Department of Employment Security has told *RIA* that the State expects to repay the federal UI loan by May 5, 2014.

Arkansas. The Arkansas Department of Workforce Services (DWS) has announced that, barring any further economic downturn, it does not expect to be a credit reduction state in the 2014 tax year [DWS website, *Unemployment Insurance Tax Information*].

New Jersey. New Jersey repaid its federal UI loans by Nov. 10, 2013, to avoid being a credit reduction state in 2013, but took out another loan in December 2013, which means that it could be a credit reduction state again in 2014 if it does not repay the loan by Nov. 10, 2014.

North Carolina. According to published reports, North Carolina expects to repay its federal UI loans by Nov. 10, 2015.

Pennsylvania. Pennsylvania took out federal UI loans in January 2014 and could be a credit reduction state in the 2016 tax year if the loans aren't repaid.

Employees Can't Voluntarily Forego Overtime

Citywide Security Services Inc., d/b/a Citywide Protection Services (Citywide), has agreed to pay $14,760 in overtime back wages to 30 security guards after an investigation by the U.S. Department of Labor's (DOL) Wage and Hour Division (WHD). The company will also pay $5,000 in civil money penalties for willful and repeat violations of the Fair Labor Standards Act (FLSA). The company president claimed that the workers had voluntarily agreed not to be paid overtime because the company could not afford to pay them time-and-a-half for hours worked over 40 in a workweek [WHD News Release, *Citywide Security Services will pay more than $14,000 in back wages to 30 Cleveland security guards because of US Department of Labor investigation,* 4/10/14; www.cleveland.com, *Citywide Protection Services must pay $14,760 in back wages: president says employees burned him on OT agreement,* 4/14/14].

The WHD found that the employer paid security guards who worked over 40 hours in a workweek at straight-time rates in checks separate from the employees' regular payroll checks.

A previous WHD investigation in 2011 found that 12 employees were due overtime after misclassification by the employer as independent contractors, rather than employees. The current WHD investigation found that six of those 12 employees did not accept their checks, at the suggestion of the company. For some employees who accepted their back wages and continued working, the company lowered their hourly wage and/or reduced their scheduled work hours.

Following the first investigation, the company and its owner, George Lewandowski, failed to implement required record-keeping provisions of the FLSA, including maintaining time and payroll records.

Lewandowski claimed, according to http://www.cleveland.com/, that he was being characterized as a bad guy, when all he had tried to do was help out his employees. He said workers kept demanding overtime hours because they needed money. Lewandowski told them he couldn't offer overtime because he couldn't afford to pay employees at time-and-a-half. He said that the employees accepted the condition of working beyond the 40-hour workweek for regular, or straight-time, pay.

Lewandowski believed that, in hindsight, he shouldn't have agreed to his employees' request for more hours. He said that he should have just hired another worker or workers. He stated that, as a result of the investigation, those who want overtime now have to pick up hours at other companies — that is, if they can find the work.

"I was just being nice," Lewandowski said. "Look where being nice got me in the long run."

Under the terms of the consent judgment with the WHD, in addition to paying the back wages and penalties, Citywide is required to post a notice informing employees about the investigation and about their rights to minimum wage, overtime, and freedom from retaliation for exercising their rights under the FLSA.

IRS Revises Form 941-X and Instructions

The IRS has posted an April 2014 version of Form 941-X, *Adjusted Employer's Quarterly Federal Tax Return or Claim for Refund,* and the Form 941-X instructions, on its website.

Form 941-X is filed to correct an error on a previously-filed Form 941. Form 941-X is a stand-alone tax return. It does not get attached to Form 941.

Changes to the Form

Additional Medicare tax. Beginning in 2013, there's an additional 0.9% Medicare tax imposed on taxpayers (other than corporations, estates, or trusts) receiving wages with respect to employment in excess of $200,000 in a year ($250,000 for married couples filing jointly and $125,000 for married couples filing separately). Employers must begin withholding the additional Medicare tax (see Payroll Guide at ¶ 4055) once an employee's wages exceed $200,000, even if the employee ultimately may not be liable for the additional tax. Employers who are adjusting over-reported amounts, or claiming a refund or abatement of over-reported employment taxes, must complete certain certifications on Part 2 of Form 941-X. The IRS has expanded the "Note" under line 3 of Form 941-X to explain that the certifications on lines 4 and 5, with respect to the correction of over-reported Medicare tax, do not include the correction of over-reported additional Medicare tax. Form 941-X cannot be used to correct over-reported amounts of additional Medicare tax unless the amounts were not withheld from employee wages or an adjustment is being made for the current year.

Reclassified workers. Code Sec. 3509 provides special tax rates for the employee share of income tax, Social Security tax, Medicare tax, and additional Medicare tax withholding when workers are reclassified by the IRS as employees. On the April 2014 version of Form 941-X, employers now enter corrections to additional Medicare tax wages on Part 3, line 17, if the IRS reclassified certain workers as employees and used Code Sec. 3509 to calculate the taxes due.

Claiming the COBRA premium credit. Under the American Recovery and Reinvestment Act of 2009 (ARRA, P.L. 111-5) and subsequent amendments, workers who were involuntarily terminated (i.e., assistance-eligible individuals or AEIs) between Sept. 1, 2008 and May 31, 2010, could receive a 65% subsidy on their COBRA continuation health insurance premiums for up to 15 months. The person who provided the subsidy to an AEI (e.g., an employer) received a credit for the subsidy on the person's employment tax return.

For tax periods beginning after Dec. 31, 2013, the COBRA premium assistance credit should be claimed on Form 941-X, Part 3, lines 19a and 19b. The credit can no longer be claimed on Form 941 or Form 941-SS. Form 941-X should be filed after filing Form 941 or Form 941-SS. Filing a Form 941-X before filing a Form 941 or Form 941-SS for the quarter may result in errors or delays in processing Form 941-X. Employers entitled to the credit, but not otherwise required to file Form 941 or Form 941-SS, should file Form 941 with a -0- entered on line 12 before filing Form 941-X to claim the credit.

Elimination of certain lines. Certain lines on Form 941-X, Part 3, have been eliminated that related to the COBRA premium credit and the advance earned income credit because the statute of limitations to make corrections to these items has expired. If the statute of limitations for any of these corrections is still open, the April 2013 version of Form 941-X will need to be filed instead.

Lines 13a through 13c have been removed from the new version of Form 941-X, as they related to the payroll tax exemption in the HIRE Act, which may not be claimed on wages paid after Dec. 31, 2010.

Other Notes

On a recent IRS payroll industry telephone conference call, it was noted that: (1) Form 941-X must currently be filed on paper; and (2) the IRS has no current plans to allow Form 941-X to be filed electronically.

Employer Not Entitled to Refund on Taxes Paid on Grossed-Up Wages

The IRS has issued a Chief Counsel Advice (CCA) which states that an employer is not entitled to a refund of employment taxes that it intentionally overpaid to avoid penalties after it "grossed-up" an employee's wages [Chief Counsel Advice 201414019].

The facts. An employer regularly sends employees overseas. Not wanting the employees to have negative tax consequences from the assignment, the employer adjusted the employees' salaries to contemplate both foreign and U.S. taxes. The adjustment is made based on a hypothetical tax, which is "all the U.S. federal and state taxes that the employee would owe if the employee stayed in the United States." The "hypothetical tax" is then compared to the estimated foreign and domestic taxes, and the employee's pay is adjusted so the employee is no better or worse off because of the taxes.

The employer filed for a refund of employment taxes. It claimed that it paid all of the employment taxes on the wages earned by employees who are assigned overseas without actually withholding the taxes. The employer said that it paid the taxes out of its own pocket, and then subsequently collected hypothetical taxes from its employees. The employer claimed that it intentionally overpaid employment taxes in order to avoid penalties, and trued up the tax liability later by claiming refunds. The employer asserted that it did not need to contact employees or get their consent to claim refunds of the employee share of FICA tax because it didn't actually withhold taxes from its employees' wages.

The ruling. The IRS ruled that the employer is not entitled to a refund of the overpaid income tax withholding (ITW) and FICA taxes. According to the IRS, if the employer has a prearranged plan to pay an amount of wages ("stated wages") to an employee net of income tax withholding (and thus facially pay the income tax withholding of the employee out of its own funds, rather than deducting the withholding from the employee's "stated wages" in the year of the wage payment), then the employer is simply determining the employee's wages under a different method of determining wages (i.e., the wages are grossed-up), and the income tax withholding and employee FICA is actually withheld on the grossed-up amount, with ITW and FICA tax being paid as the wages are paid.

The IRS said that because the employer is actually withholding the taxes from the employees' grossed-up wages under its plan, the employer is not entitled to a refund of income tax withholding for a prior year, and any refund of employee FICA taxes would be subject to the usual rules, including the requirement that the employer procure consents from the employees to receive refunds on the employees' excess FICA withholding. The IRS assumed that the employees were getting current credit for the ITW under the employer's plan.

The IRS said that the above situation was different from a situation where, in a subsequent year, the employer discovered a possible error and paid the ITW and employee FICA from its own funds (and the employee received no credit for ITW), and then applied for a refund.

See Payroll Guide at ¶ 3795 for further information on this topic.

Taxpayer Did Not Qualify for ' 'Reasonable Cause'' Exception to Failure-to-Deposit Penalty

The IRS has issued a Chief Counsel Advice (CCA) which says that a taxpayer did not qualify for the "reasonable cause" exception to the penalty for failure to timely deposit his employment taxes that were owed as a result of his exercise of nonqualified stock options [Chief Counsel Advice 201414017].

The IRS will generally assert the failure to timely deposit employment tax penalty under Code Sec. 6656(a) unless the taxpayer can demonstrate that the failure to make timely employment tax deposits was due to "reasonable cause and not due to willful neglect." The taxpayer said that there was "reasonable cause" for not timely depositing the employment taxes based on his reliance on a third-party payroll processing company to make his employment tax deposits, as well as his history of timely payment of other required deposits. In addition, the taxpayer corrected the late deposits relating to the stock-based compensation immediately upon discovering the problem by instituting new procedures.

The IRS did acknowledge that the taxpayer's actions may amount to the exercise of ordinary business care that the reasonable cause defense requires, and to the absence of "willful neglect." However, the reasonable cause defense also requires the taxpayer to demonstrate that despite his exercise of ordinary business care and prudence, he was "rendered unable to meet his responsibilities." The IRS concluded that the taxpayer did not meet this requirement based on the Supreme Court's decision in *U.S. v. Boyle,* 55 AFTR 2d 85-1535, 1/9/85, that reliance on an attorney to prepare and file a tax return is not "reasonable cause" to abate the late filing penalty.

First time abate administrative waiver. The CCA also discusses the "first time abate" (FTA) administrative waiver that the IRS may use to relieve a taxpayer of a penalty for a single period if he has a record of prior compliance. The examining agent concluded that the taxpayer did not qualify for a FTA. The taxpayer had not requested a waiver under the FTA procedures. The taxpayer also asked whether the FTA process may be used where the penalty has not been assessed, but rather is being considered for a taxpayer under examination. The IRS said that, because the FTA is granted as a matter of administrative grace, and not as a result of any statutory authority, this question is not a legal issue, but rather is an IRS management policy decision. It was the opinion of the CCA that it would be a waste of resources for the penalty to have to be assessed, and then protested, and then abated, if the FTA was appropriate. The CCA recommends that the FTA be considered for waiver before assessment of failure-to-deposit penalties.

The CCA also states that under the current procedures set forth in the Internal Revenue Manual, the FTA must be applied to the earliest tax period. The taxpayer had asked whether the FTA could apply to the period with the largest penalty.

Tax Professionals May Now View Transcript of Client's Account Online

The IRS has announced that a qualified tax professional who has a Form 8821, *Tax Information Authorization,* on file may now request a client's account transcript using the Transcript Delivery System (TDS) [IRS e-News for Tax Professionals, Issue No. 2014-14, 4/4/14].

Tax professionals who use TDS may request and view online account transcripts (including employment tax accounts), wage and income documents, tax return transcripts, and verification of non-filing letters. A new product (the Record of Account) combines both the Return Transcript and Account Transcript in one product.

Form 8821 must be on file with the Centralized Authorization File (CAF), naming the individual, not the individual's business, as the appointee for the client. TDS transcripts can be requested if either Form 8821 or Form 2848, *Power of Attorney and Declaration of Representative,* is on file with the CAF.

Users must meet the requirements of IRS Circular 230, *Regulations Governing Practice before the Internal Revenue Service,* or be an Electronic Return Originator (ERO) with five or more accepted returns, in order to register and use TDS.

IRS Improves Functionality of Online Tax Deposit Calendars

The IRS has updated Publication 1518A, *Tax Calendar Options for Businesses and Self-Employed.* The publication notes that businesses can track federal tax due dates on their computers or mobile devices, using electronic versions of the IRS Tax Calendar for Businesses and Self-Employed.

The "Online Calendar" is a monthly calendar that shows all tax deadlines for the month, including income tax, employment tax, and excise tax deadlines. This calendar is available in both English and Spanish. It can now be accessed from a computer, smartphone, or tablet.

Users can see all events or filter them by monthly depositor, semiweekly depositor, excise, or general event types (e.g., individual, corporate, or partnership income tax deadlines). For example, if a user would like to only view semiweekly deposit deadlines, the user would un-check the "General," "Monthly Depositor," and "Excise" boxes on the lower left-hand side of the screen, and then the screen will only display the deadlines for a semiweekly depositor, including the deadline for filing Form 941, if applicable.

The IRS "CalendarConnector" provides users with access to important deadlines right from their desktop, even when they're offline. As new events are added, the events will be automatically updated via the desktop tool.

The IRS recently issued a new version of the "CalendarConnector." Employer events are now separated into "Monthly Depositor" and "Semiweekly Depositor" categories. Users check boxes to select the event categories they would like to display (general, monthly depositor, semiweekly depositor, excise).

Adding due dates to user's Outlook calendar. Users now have the option to add the calendar to Outlook 2007, Outlook 2010, or Mac iCal. Subscribing adds web calendar data to a user's calendar program. The web calendar data will be updated automatically, but users will not be able to make manual changes to it.

Employment tax due dates may also be found in Payroll Guide at ¶ 4210.

USCIS Now Has Information Sheet to Help Answer Employees' Form I-9 Questions

U.S. Citizenship and Immigration Services (USCIS) has created a one-page information sheet that includes employees' top 12 questions on completing Form I-9, *Employment Eligibility Verification* [USCIS website, Form I-9 Employee Information Sheet, 1/28/14].

Background. Federal law requires employers to verify the identity and employment authorization of new employees. Employees must complete Section 1 of Form I-9 no later than on the first day of employment. They must also give their employer documentation that establishes their identity and employment authorization. They must present the documentation no later than the third day after beginning employment.

The new information sheet. The information sheet includes answers to the following questions: (1) What is the purpose of the Form I-9?; (2) Must I fill out everything in Section 1?; (3) Which documents do I need to show my employer?; (4) Do I need to show my employer one or two documents?; (5) What will happen if I do not complete Section 1 and/or present acceptable documents?; and (6) Can I get in trouble if I lie on the form?

The employee information sheet is available in English and Spanish.

IRS Issues 2014 Housing Cost Exclusion Amounts for Individuals Working Abroad in High-Cost Areas

The IRS has issued a notice that allows certain individuals who work outside of the U.S. and live in certain high-cost areas to deduct or exclude a greater portion of their housing costs for the 2014 tax year than is otherwise allowable [Notice 2014-29, 2014-18 IRB].

The U.S. generally taxes its citizens and residents on their worldwide income. However, individuals who have a tax home in a foreign country, and who satisfy either the bona fide foreign residence test or the foreign physical presence test, may elect to exclude certain foreign housing costs paid or incurred on their behalf from gross income (or claim a deduction where the costs are not paid by the employer). This is known as the foreign housing cost exclusion (see Payroll Guide at ¶ 21,110).

The excludable housing cost amount is the excess, if any, of (1) the individual's allowable housing expenses for the year (i.e., the housing expense limitation) over (2) a base amount. For 2014, a taxpayer's allowable housing expenses, assuming he or she is eligible for the exclusion during the entire year, generally can't exceed $29,760. The base amount is $15,872. Therefore, the maximum housing cost exclusion for 2014 is generally $13,888 ($29,760 – $15,872). However, the IRS is permitted to issue regs or other guidance (e.g., Notice 2014-29, 2014-18 IRB) that provides for an adjustment to the maximum allowable housing expense limitation on the basis of geographic differences in housing costs relative to housing costs in the United States.

The notice. The new notice increases the maximum allowable housing expense limitation above the otherwise applicable limitation of $29,760 for localities in: Angola, Argentina, Australia, Austria, the Bahamas, Bahrain, Barbados, Belgium, Bermuda, Bosnia-Herzegovina, Brazil, Canada, Cayman Islands, Chile, China, Colombia, Costa Rica, Denmark, Dominican Republic, Ecuador, Estonia, France, Germany, Ghana, Greece, Guatemala, Guyana, the Holy See, Hungary, India, Indonesia, Ireland, Israel, Italy, Jamaica, Japan, Kazakhstan, Korea, Kuwait, Luxembourg, Macedonia, Malaysia, Malta, Mexico, Mozambique, Namibia, the Netherlands, Netherlands Antilles, New Zealand, Nicaragua, Nigeria, Norway, Panama, Paraguay, Peru, Philippines, Poland, Portugal, Qatar, Russia, Rwanda, Saudi Arabia, Singapore, South Africa, Spain, Suriname, Switzerland, Taiwan, Tanzania, Thailand, Trinidad and Tobago, Turkey, Ukraine, United Arab Emirates, United Kingdom, Venezuela, and Vietnam.

illustration: A U.S. taxpayer works in Hong Kong, China, for all of 2014. His maximum housing cost exclusion is $98,428 ($114,300 full-year limit on housing expenses in Hong Kong per Notice 2014-29, 2014-18 IRB, minus $15,872 base amount).

Stateline

New laws and developments are reported from the following states:

ARIZONA

Unemployment. Enhancements are being made to the Arizona Department of Economic Security's (DES) online tax and wage filing system. Employers will soon have the ability to create, maintain, and reset their own passwords. Also, all active rated and reimbursable employers will be able to see their account credit balance on the Tax and Wage System (TWS) home page after successful login into the system. In addition, employers will be able to notify the DES of any changes to their business (e.g., change in address, business operations, or ownership), utilizing the online filing system [DES website, *Upcoming Enhancements To The Online Tax And Wage Filing System – Coming Soon*].

ARKANSAS

Withholding. The Arkansas Department of Finance and Administration is following the federal standard mileage rates for 2014. The standard business mileage rate has decreased from 56.5¢ to 56¢ per mile. The optional standard mileage rate for transportation expenses deductible as medical or moving expenses has decreased from 24¢ to 23.5¢ per mile. The rate for individuals operating their own passenger automobiles for a charitable organization is still 14¢ per mile [Arkansas State Revenue Tax Quarterly 2, 04/01/2014, xx].

CALIFORNIA

Unclaimed Property. The California State Controller's Office (SCO) has released its 2014 spring newsletter. The newsletter reminds holders that due diligence letters for the 2014 report year must be sent out *by April 30, 2014.* Holders are required to send due diligence letters to owners with a property value of $50 or more prior to reporting the accounts to the SCO. The newsletter also contains guidance on submitting the Holder Remit Report and on sending funds electronically [SCO 2014 Spring Quarterly Newsletter, 4/15/14].

ILLINOIS

Employer Taxes. The City of Chicago repealed its employer expense tax as of Dec. 31, 2013. The tax was scheduled to expire on July 1, 2014 [Call by *RIA* to City of Chicago Press Room, 4/16/14].

INDIANA

Garnishment. *Effective July 1, 2014,* an employee's earnings can be garnished up to the lesser of: (a) 25% of the employee's disposable earnings for the week (however, upon a showing of good cause by the employee, this amount can be reduced to the lesser of an amount between 10% and 25% of the employee's disposable earnings); or (b) the amount by which the employee's disposable earnings for the week exceeds 30 times the federal minimum wage rate. The "good cause" provision above is new [L. 2014, H1347].

KANSAS

Unemployment. Governor Brownback has signed a bill that reduces 2014 unemployment tax rates by 15% for employers with a positive account balance (i.e., employers who have paid more into the unemployment trust fund than their workers have received in unemployment benefits) if they timely filed all 2013 unemployment tax reports and timely paid all tax due. Before the discount, 2014 unemployment tax rates for positive balance employers ranged from 0.11% to 5.4%. After the discount, unemployment tax rates for these employers range from 0.09% to 4.59%. Employers eligible for the discount will receive an informational letter from the Kansas Department of Labor. The new rate should be reflected on the employer's first quarter 2014 unemployment tax report. The discount increases to 25%, *beginning in the 2015 tax year* [Kansas Office of the Governor Media Releases, *Governor Sam Brownback signs House Bill 2576 providing relief on unemployment tax rates,* 4/8/14; L. 2013, H2576].

New legislation creates a new classification of employers called "entering and expanding employers," who are eligible to be taxed for four years at the new employer rate, or a tax rate based on their demonstrated risk, as reflected in their reserve fund ratio history, if they maintain a positive account balance throughout the reduced-rate period and have an increase in their account balance during each year. In addition, non-construction employers who start a business in Kansas, *after June 30, 2014,* after being successful in another state, will have the option, *beginning in 2015,* of transferring their earned unemployment experience rating from that state and applying it to the Kansas tax table, instead of using the standard new employer rate of 2.7%. However, their Kansas unemployment tax rate may not be less than 1%. Another provision in the legislation removes the cap placed on voluntary contributions that limited employers from reducing their unemployment tax rates to no more than five rate groups [Kansas Office of the Governor Media Releases, *Governor Sam Brownback signs House Bill 2576 providing relief on unemployment tax rates,* 4/8/14; L. 2013, H2576].

MAINE

Withholding. New legislation allows the State Assessor to establish an alternative due date for information statements that is consistent with the due date for federal information statements. Currently, all Maine information statements must be provided by January 31. Some federal statements may be provided after that date [L. 2013, S673].

MARYLAND

Unemployment. New legislation, *effective July 1, 2014,* amends current law on work-sharing arrange-

ments. Changes made by the law include: (1) allowing permanent part-time workers to be part of a work-sharing plan; (2) requiring the employer to provide an estimate of the number of layoffs to be avoided if the work-sharing arrangement is approved; (3) requiring employers to provide certain information about the work-sharing arrangement to affected employees who are not covered by a collective bargaining agreement; and (4) specifying that an affected employee who has exhausted work-sharing benefits or unemployment benefits is not eligible for extended UI benefits [L. 2014, H1417].

MASSACHUSETTS

Unemployment. Governor Patrick has signed legislation that allows unemployment tax rates for experienced employers to continue to be determined under Schedule E in the 2014 tax year, rather than under a higher unemployment tax rate schedule. This is the fifth consecutive year that legislation was enacted to keep the tax rates under Schedule E. Rates range from 1.26% to 12.27%. A spokesperson for the Massachusetts Department of Unemployment Assistance (DUA) has told *RIA* that the new employer rate for non-construction employers remains at 2.83% in 2014. In addition, the new employer rate for construction employers is 8.98% in 2014 (9.37% in 2013). All employers must also pay a 0.06% workforce training fund tax (same rate as in 2013) and a 1.08% solvency assessment (1.31% in 2013) [L. 2013, H4036].

MINNESOTA

Wage and Hour. Governor Dayton has signed a bill that will increase the State's minimum wage rate for "large employers" (i.e., an enterprise with an annual gross volume of sales made or business done of at least $500,000, exclusive of separately stated state retail excise taxes) from $6.15 per hour to: (a) $8.00 per hour on Aug. 1, 2014; (b) $9.00 per hour on Aug. 1, 2015; and (c) $9.50 per hour on Aug. 1, 2016. The minimum wage rate for small employers will increase from $5.25 per hour to: (i) $6.50 per hour on Aug. 1, 2014; (ii) $7.25 per hour on Aug. 1, 2015; and (iii) $7.75 per hour on Aug. 1, 2016. The threshold to be classified as a small employer will decrease from $625,000 in sales to $500,000 in August 2014. Additionally, the law will increase the minimum wage rate that may be paid during the first 90 consecutive days of employment from $4.90 per hour to $6.50 per hour on Aug. 1, 2014, $7.25 per hour on Aug. 1, 2015, and $7.75 per hour on Aug. 1, 2016. There will also be a new minimum wage rate that can be paid to children under 18 years old. This rate is $6.50 per hour, *beginning Aug. 1, 2014,* and will increase as noted above for the rate paid during the first 90 consecutive days of employment. Minimum wage rates for workers at hotels, motels, and resorts will also increase [L. 2013, H2091].

A recipient of donated time from another state employee may not be paid for more than 80 hours in a payroll period during which the recipient uses sick leave credited to his or her account. The recipient may use up to 80 hours of program donations after the death of a spouse or dependent child [L. 2013, H2091].

Withholding. The Minnesota Department of Revenue (DOR) has received inquiries from taxpayers questioning why their payment did not show as coming out of their bank account. A bank will generally show the payment coming out of a taxpayer's account 2-3 days after it was requested. However, taxpayers will receive credit for the payment as of the date they requested it [DOR E-Mail, *ACH Bank Withdrawals,* 4/16/14].

MISSISSIPPI

Unemployment. New legislation revises 2014 unemployment tax rates. Unemployment tax rates for experienced employers now range from 0.39% to 5.4%. These rates include a 0.19% workforce investment and training assessment (formerly known as the workforce enhancement training assessment). New employer rates for the first, second, and third years of liability are now 1.16%, 1.26%, and 1.36%, respectively. These rates include the 0.19% workforce investment and training assessment. Employers who paid their first quarter unemployment taxes prior to the enactment of this legislation will receive a notice that adjusts their liability based on the amended tax rate [L. 2014, S2958].

MONTANA

Unclaimed Property. Montana tax preparers can search for unclaimed property (including payroll checks) belonging to their client on Taxpayer Access Point (TAP) using their client's name [Montana Tax News You Can Use, 4/17/14].

NEBRASKA

Wage Payment. New legislation, *effective 90 days after the close of the legislative session* (July 18 if the session adjourns on April 17th as scheduled), requires employers to provide an itemized wage statement to each employee every payday that includes: (1) the name of the employer; (2) the hours for which the employee is being paid; (3) the wages earned by the employee; and (4) the deductions made. The wage statement may be provided by mail, electronically, or at the place of employment [L. 2013, LB560].

New legislation, *effective Jan. 1, 2015,* establishes requirements for employers who pay employees by payroll debit card. An employer must provide employees with immediate access to their wages, one free funds withdrawal per week up to and including the total amount of the employee's net wages, and not require employees

to pay any fees associated with paycard use [L. 2013, LB765].

NEW MEXICO

Wage and Hour. New legislation requires employers subject to the State's minimum wage law to display a poster in their facility *by July 1, 2014,* regarding human trafficking. The notice must be in English, Spanish, or any other language that more than 10% of the workers at the facility speak. The required language in the poster notes that obtaining forced services or labor is a crime under federal and New Mexico law. The poster must provide phone numbers for the National Human Trafficking Resource Center Hotline [L. 2014, H181].

Withholding. The New Mexico Taxation and Revenue Department has issued a March 2014 version of *FYI-104, New Mexico Withholding Tax.* The publication provides a general overview of New Mexico withholding tax requirements and procedures, and includes both wage bracket and percentage method withholding tables. The publication was updated solely for an address change. There were no changes to the withholding tables in Payroll Guide at ¶ 26,307 and Payroll Guide at ¶ 26,308 [Publication FYI-104, *New Mexico Withholding Tax,* revised 3/1/14].

OKLAHOMA

Wage and Hour. Oklahoma Governor Fallin has signed legislation, that, *effective July 1, 2014,* prohibits any municipality or other political subdivision of the state from establishing its own mandatory minimum wage rate or minimum number of vacation or sick leave days, whether paid or unpaid, which an employer would be required to pay or grant employees [L. 2013, S1023].

VIRGINIA

Withholding. The Virginia Department of Taxation is reminding tax professionals that the Department's Tax Professionals Hotline at (804) 367-9286 is open Monday through Friday, 8:30 a.m. to 4:30 p.m., to provide quick responses to inquiries about client accounts or other tax questions. This service is available for all tax types.

WASHINGTON

Withholding. Victims of last month's mudslides and flooding in counties of Washington State that are designated as federal disaster areas now have until *October 15* to file their first and second quarter 2014 federal Form 941, *Employer's Quarterly Federal Tax Return.* The IRS will abate interest, late payment, and late filing penalties that would otherwise apply. Relief will be provided based on the address that is on file with the IRS. Taxpayers do not need to contact the IRS to receive this relief. The IRS is also waiving late deposit penalties for federal payroll deposits normally due on or after March 22 and before April 7, if the deposits were made *by April 7, 2014* [IR 2014-45, 04/04/2014].

WISCONSIN

Unclaimed Property. The Wisconsin Department of Revenue (DOR) has issued a tax publication providing guidance for reporting unclaimed property. The publication covers the following topics: who must report; what is unclaimed property; when is property abandoned; when to report; how to report unclaimed property to the DOR; using due diligence to locate the owner; what to report to the DOR; when and how to remit unclaimed property; what the DOR does to find owners; and tips for successful reporting [Wisconsin Dept. Rev. Tax Publication 83, 04/01/2014].

Wage and Hour. *Effective April 18, 2014,* the following individuals are exempt from Wisconsin's minimum wage laws: (1) outside salespersons, as defined in 29 USCS 203(k), and (2) individuals whose primary duty is "obtaining orders or contracts for services or for the use of facilities for which a consideration will be paid by the client or customer and who is customarily and regularly engaged away from the employer's place of business in performing that primary duty" [L. 2013, A412].

Wisconsin employers are not required to keep a record of the hours worked by salaried employees who are exempt from being paid overtime [L. 2013, A712].