



# Payroll Insights

Employment tax news to guide you now and for the future

October 2022



## John Montgomery's fresh take: Withholding risks linked to work location accuracy

Most payroll people know the complexities of getting employees paid and “getting it right.” From an organizational perspective, however, there has been an attitude of “it is an overwhelming administrative burden, and we haven’t gotten caught, let a sleeping dog lie.” It is challenging for employers without time/attendance systems or other workplace tracking mechanisms to know where employees are working

now that hybrid work arrangements are the new norm. And many employees took the opportunity, while not having to work in person during 2020 and 2021, to permanently move to a new location or purchase a second home during the pandemic. It is imperative for employers to have updated Forms W-4 from their employees and withhold state income tax properly. Open enrollment is a good time to require employees to submit an updated W-4.

We are starting to see cases where residency is now becoming an issue and this in turn can lead to inquiries around correct withholding based upon an employee’s actual work location. On August 31, the District of Columbia’s Office of the Attorney General sued MicroStrategy “for conspiring to help founder and Executive Chairman, Michael Saylor, evade taxes he legally owes on hundreds of millions of dollars he’s earned while living” in Washington. Attorney General Karl Racine noted that the action is “the first lawsuit brought under [the district’s] recently amended False Claims Act encouraging whistleblowers to report residents who evade tax laws by misrepresenting their residence.”

Historically, employers have been required to withhold and remit based on where employees work with a potential requirement to withhold any differential in tax rates back to the resident state, if different than the work state. However, the DC Department of Revenue is suing an executive and his employer for allegedly fraudulently reporting the individual as a Florida resident. It remains to be seen what records employers need to keep and how diligent employers need to be about tracking/auditing employee records and data submission may come into question with rising litigation similar to that of the District’s recent lawsuit against MicroStrategy.





### **AICPA letter to Treasury requesting updated guidance on hybrid work**

The AICPA has issued a letter to the IRS Commissioner and Assistant Secretary of the Department of Treasury requesting updated guidance “in key areas related to employees working remotely.” The request cited outdated case law that does not reflect the current remote/hybrid work environment.

The AICPA asked Treasury to specifically define:

- Employer-location-based employee,
- Remote employee,
- Hybrid employee, and
- Tax home

The AICPA also requested Treasury to provide guidance related to:

- Employment arrangement/expectation guidance
- Considerations in pursuit of a trade or business
- Home office expense considerations

Concerns are increasing among professionals on strategies and compliance, in the following areas:

- Double taxation, for residents of states without guidance on competing telecommuting policies (i.e. resident of VA, subject to NY telecommuting policy and withholding)
- Individuals claiming residency in a state without income tax to avoid taxation (See Fresh Take above)
- New states considering teleworking/remote work policies (See New Jersey below)

Read the full letter [here](#).

### **SIFL rates**

The Department of Transportation released updated Standard Industry Fare Level (SIFL) rates for the second half of 2022. SIFL rates are a special valuation rule to determine the amount an employer must include in an employee’s income for personal travel on an employer-provided aircraft.

The rates are down approximately 1.75% from the previous six-month period. Effective July 1, 2022 through December 31, 2022, the terminal charge is \$44.18, 0-500 miles are \$0.2417/mile, 501-1500 miles are \$0.1843/mile and miles over 1501 are \$0.1771/mile.

### **50% of CARES Act Social Security due December 31, 2022**

Employers who deferred payment of applicable employment taxes for the payroll tax deferral period beginning on March 27, 2020, and ending on December 31, 2020, should be prepared to pay the remaining balance, up to 50% of original deferral amount, by December 31, 2022.

Applicable employment taxes are generally the employer share of social security taxes.

Under section 2302 (d)(2) of the Coronavirus Aid, Relief, and Economic Security (CARES) Act, an employer shall be treated as having timely made all deposits of applicable employment taxes that are required to be made (without regard to this section) for such taxes during the payroll tax deferral period if all such deposits are made not later than the applicable date – December 31, 2021, and December 31, 2022.

## Social Security wage base projection

The 2023 Social Security wage base projection is \$155,100, subject to change based on economic development.

## IRS plans to release a new Form 1099 portal on January 1, 2023

As a result of Section 2012 of the Taxpayer First Act, the IRS is launching the Information Return Intake System ("IRIS") that will allow filers to create a file forms for the 2023 tax year. IRIS will allow payors to manually enter data and upload .CSV or .XML files to create forms 1099 but it will NOT replace the current FIRE system.

Currently there are 2 ways you can electronically file information returns:

- File large volumes of information returns with the [FIRE System](#)
- File Affordable Care Act (ACA) Forms 1094 and 1095 with the [AIR System](#)

In January 2023, employers can use IRIS to:

- Submit small or large volumes of Forms 1099 series
- File electronically without software
- Choose an electronic filing option

[File Information Returns | Internal Revenue Service](#)



## State updates

### New York – Unemployment insurance annual interest assessment surcharge on federal loan to begin

Under the CARES Act new unemployment programs were created to help employees who could no longer work. Unemployment skyrocketed as a result of the pandemic and New York Department of Labor borrowed funds from the federal government to keep up with payment of over \$105 billion dollars in unemployment benefits to out-of-work residents.

New York is managing the repayment of its federal debt. Part of the management of the debt repayment is a state law that requires contributory employers to pay an annual [interest assessment surcharge](#) ("IAS") on the loan balance outstanding. The current surcharge is .23% or about \$27.60 per employee. The surcharge amount is subject to change depending on the outstanding loan balance, wages base limits and the federal interest rate.

All businesses that pay unemployment insurance contributions are required to participate in paying IAS. It will not affect the business's unemployment insurance experience rate and can be paid annually by September 30 electronically when e-filing 2022 NYS-45 return.

### New Jersey – Proposed nonresident tax legislation

New Jersey is flexing its nonresident tax muscle. Governor Phil Murphy has proposed new legislation that would levy New Jersey income taxes on people who work in their out-of-state homes for New Jersey-based companies. If enacted, the new legislation would mirror New York's convenience of the employer rules.

### Idaho – Potential transition to flat income tax rate

On September 1, 2022, the Idaho senate and house passed Proposal 34-1 that, if signed by the governor, would replace graduated tax rates for individuals and corporations and implement a flat tax rate of 5.8%.

## Colorado – Denver minimum wage increase

In 2019 Colorado gave cities power to enact their own minimum wage rate under HB19-1210. After that, the City of Denver passed an [ordinance to increase minimum wage](#) each January 1. Effective January 1, 2023, the minimum wage in Denver will increase to \$17.29/hour. This is up from \$15.87. Denver’s rate is tied to the Consumer Price Index (CPI) for Denver-Aurora-Lakewood, which was 8.94% thus causing the increase.

Employers outside the Denver city limits are not covered under the [minimum wage ordinance](#) and must abide by the state rate. “Employers should not rely on their mailing address to determine whether or not to pay Denver’s local minimum wages,” Auditor Tim O’Brien said. “We recommend using our regional address finder on our website to check if work was performed within the boundaries of the city and county of Denver.”



### Meet one of our Employment Tax professionals: Reagan Aikins

Reagan has 20 years of tax experience including 7 years of international tax and is a Certified Public Accountant (CPA). Reagan leads a large base of employment tax engagements and assists clients of all sizes navigate their federal, state and local employment tax matters.

Reagan lives on the North Shore of Lake Michigan with her husband and three sons. In her free time, she runs long distances, cooks, reads, crochets sweaters and supports her boys in navigating life.

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