



# Payroll Insights

**Employment tax news to guide you now and for the future**

February 2021

## **KPMG report: Employer-provided student loan repayments, tax-free benefits**

Recent legislation allows employers to assist employees with repayment of their student loans on a tax-free basis through the end of 2025, up to an annual IRC section 127 limit—currently \$5,250 per employee.

For more information, please see the KPMG's [TaxNewsFlash](#) along with KPMG's [What's News in Tax Observation](#).

## **Review of compensation and benefits-related tax provisions in Consolidated Appropriations Act, 2020**

The stimulus legislation—the “Taxpayer Certainty and Disaster Tax Relief Act of 2020” that is part of the Consolidated Appropriations Act, 2020 (Pub. L. No. 116-260) and enacted December 27, 2020—includes a variety of compensation and benefits-related tax provisions such as an expansion of the employee retention credit (ERC) through June 30, 2021 (from January 1, 2021) as well as full deductibility of business meals provided by a restaurant for two calendar years.

For more information, please see KPMG's [TaxNewsFlash](#) for more details.

## **IRS Issued Draft 2021 Forms**

*Employer's Quarterly Federal Tax Return*

- Draft Form 941, [Employer's Quarterly Federal Tax Return](#), was updated to account for the expiration of social security deferrals.

## **IRS Final – 2021 Forms**

*Form 7200, Advance Payment of Employer Credits Due to Covid-19 and Instructions*

- Form 7200, [Advance Payment of Employer Credits Due to COVID-19](#), was updated to allow for advanced COVID-19 refunds in 2021.

*General Instructions for Forms W-2 and W-3*

- The IRS released the Final [General Instructions for Forms W-2 and W-3](#). This release includes employer instructions to report the employee social security tax deferred in 2020. The IRS provides additional guidance on reporting the social security deferral repayments under [Notice 2020-65](#).

*Publications*

- The IRS released the final 2021 Publication 15 [Employer's Tax Guide](#) and 15-B [Employer's Tax Guide to Fringe Benefits](#), which includes draft COVID-19 and 2021 updates.

## **IRS guidance (updated FAQs), tax credits for small and midsize employers providing paid leave (COVID-19)**

The IRS issued an updated set of “frequently asked questions” (FAQs) regarding the extended and expanded tax credits for qualified paid sick and qualified family leave wages provided employees by small and midsize employers—relief measures provided in response to the coronavirus (COVID-19) pandemic.

For more details, please see KPMG's [TaxNewsFlash](#)

## Multistate Withholding – Pre and Post COVID-19

State	COVID-19 Withholding Guidance <sup>4</sup>	Citations
Alabama	Alabama residents are taxable on all of their income, whether they work in or outside of the state. AL will not change withholding requirements for businesses based on an employee's temporary telework location within the state.	<a href="#">Click here</a>
Alaska	N/A	N/A
Arizona	No COVID-19 guidance specific to withholding released.	N/A
Arkansas	No COVID-19 guidance specific to withholding released.	N/A
California	Employees temporarily performing services within Ca due to the COVID-19 pandemic should still be subject to state unemployment and state disability insurance taxation of their regular work state. The state income tax withholding requirements have not changed. Employees are subject to CA state income tax withholding based upon all services paid in the state. Employers should refer to the state information sheet: Multistate Employment (DE231D).	<a href="#">Click here</a>
Colorado	No COVID-19 guidance specific to withholding released.	N/A
Connecticut	Same as pre-COVID.	N/A
Delaware	No COVID-19 guidance specific to withholding released.	N/A
Wilmington - Delaware	Wilmington provided clarifying guidance for non-resident employees who work for a business within the City. Withholding may be required for nonresidents choosing to work outside of the city. Examples are provided on the FAQ.	<a href="#">Click here</a>
District of Columbia	No COVID-19 guidance specific to withholding released.	
Florida	N/A	N/A
Georgia	<p>Georgia will not change withholding requirements for businesses based on the employee's temporary location under the guidance below:</p> <ol style="list-style-type: none"> <li>1. There is an official work from home order issued by an applicable federal, state or local government unit or</li> <li>2. Pursuant to the order of a physician in relation to the COVID-19 outbreak or due to an actual diagnosis of COVID-19, the employee is working at home. Additionally, the subsequent 14 days are included in the time period to allow for a return to normal work locations.</li> </ol> <p>However it is important to note:</p> <ol style="list-style-type: none"> <li>1. If the person remains in Georgia after the temporary remote work requirement has ended, the normal rules for determining nexus, the employee's wages, and the employer's income tax withholding obligation will apply.</li> <li>2. A company may not assert that solely having a temporarily relocated employee in Georgia, under the circumstances described above, creates nexus for the company.</li> <li>3. Wages paid to a nonresident employee that normally works in Georgia but that is temporarily working in another state, under the circumstances described above, would be considered Georgia wages and the employer should continue to withhold Georgia income taxes.</li> </ol>	<a href="#">Click here</a>
Hawaii	No COVID-19 guidance specific to withholding released.	N/A
Idaho	No COVID-19 guidance specific to withholding released.	N/A

State	COVID-19 Withholding Guidance <sup>4</sup>	Citations
Illinois	<p>If an Illinois resident employee has performed work for more than 30 working days from their home in Illinois for an out-of-state employer, the employer may be required to register with the Illinois Department of Revenue (IDOR) and withhold Illinois Income Tax from the employee.</p> <p>IDOR will waive penalties and interest for out-of-state employers who fail to withhold Illinois income taxes for Illinois employees where the sole reason for the Illinois withholding obligation is that the employee is working from home due to the COVID-19 pandemic.</p>	<a href="#">Click here</a>
Indiana	<p>Indiana Department of Revenue will not use someone's relocation, that is the direct result of temporary remote work requirements arising from and during the COVID-19 pandemic health crisis, as the basis for establishing Indiana nexus or for exceeding the protections provided by P.L. 86-272 for the employer of the temporary relocated employee.</p> <p>The protections provided under this guidance will extend for 14 days beyond the time during when:</p> <p>(1) there is an official work-from-home order issued by an applicable federal, state or local governmental unit; or</p> <p>(2) the employee is remote pursuant to the order of a physician in relation to the COVID-19 outbreak or due to an actual diagnosis of COVID-19.</p> <p>Please note that Indiana does not specifically address an employer's wage reporting and withholding obligation.</p>	<a href="#">Click Here</a>
Iowa	<p>According to a FAQ document available on the Iowa Department of Revenue website, the state's withholding requirements are not affected by the COVID-19 pandemic. Compensation for personal services rendered within the state is generally subject to Iowa income tax unless the income is exempted by Iowa law. In general, if an employer has an office or transacts business within the state, withholding is required for its employees.</p>	<a href="#">Click here</a>
Kansas	<p>If you have an employee performing services in Kansas, those wages are subject to Kansas withholding. If the nonresident works full time in Kansas, the employer must withhold Kansas income tax from the employee's total wages as if the employee were a Kansas resident. When you employ or pay a Kansas resident for services performed outside Kansas (either full time or part time), you must withhold from that employee's total wages the amount of withholding tax due Kansas, less the amount of withholding tax required by the other state(s).</p>	<a href="#">Click here</a>
Kentucky	<p>According to COVID-19 Tax Relief FAQ page on the Kentucky Department of Revenue website, KY employers are not required to change their current withholding method for employees working from home due to Covid-19 with respect to KY residents and nonresidents who reside in states that have a reciprocal agreement with KY.</p>	<a href="#">Click here</a>
Louisiana	No COVID-19 guidance specific to withholding released.	N/A

State	COVID-19 Withholding Guidance <sup>4</sup>	Citations
Maine	Maine income tax withholding for wages paid in 2020 to a Maine resident suddenly working in Maine due to a state's COVID-19 state of emergency, will continue to be calculated as if the Maine resident were still working outside the State.	<a href="#">Maine Tax Alert</a>
Maryland	Maryland employer withholding requirements are not affected by the current shift from working on the employer's premises to teleworking because the taxability is determined by the employee's physical presence. The state currently has reciprocal agreements in place with Virginia, the District of Columbia, West Virginia and Pennsylvania.	<a href="#">Click here</a>
Massachusetts	Income of a non-resident derived from a trade or business, including any employment, carried on in the commonwealth is sourced to Massachusetts. Pursuant to this rule, all compensation received for personal services performed by a non-resident who, immediately prior to the Massachusetts COVID-19 state of emergency, was an employee engaged in performing such services in Massachusetts, and who during such emergency is performing such services from a location outside Massachusetts due solely to the Massachusetts COVID-19 state of emergency, will continue to be treated as Massachusetts source income subject to personal income tax and personal income tax withholding. The state has removed the December 31, 2020 deadline. The sourcing rules should remain in effect for 90 days after the state of emergency is lifted.	<a href="#">Click here</a>
Michigan	No COVID-19 guidance specific to withholding released.	N/A
Michigan - Local	Michigan has issued guidance on city income taxes and telecommuting. Those wages earned by nonresidents should not be subject to local income tax.	<a href="#">Click here</a>
Minnesota	Minnesota will not seek to establish nexus for any business tax solely because an employee is temporarily working from home due to the COVID-19 pandemic. Generally, an employer that transacts business or derives income from sources in Minnesota must withhold for employees.	<a href="#">Click here</a>
Mississippi	During the period of national emergency, Mississippi will not change withholding requirements for businesses based on the employee's temporary telework location. Mississippi residents are taxable on their total income, regardless of where they work. The state will not impose new withholding requirements on the employer during this time.	<a href="#">Click here</a>
Missouri	Missouri has issued guidance that allows qualifying employers to elect to withhold tax based on the employee's temporary work location. This rule should only apply to those employers that did not maintain a time and attendance system for all employees on or before the declaring date (March 13, 2020) and only where the employer is: An employer having a primary work location in Missouri with employees working from temporary work locations in states other than Missouri; or an employer having a primary work location in a state other than Missouri with employees working from temporary work locations in Missouri. Pursuant to the rule, each employer that elects to withhold and remit tax based on the primary work location of its employees shall submit an affidavit notifying the Department of Revenue by January 31, 2021.	<a href="#">Click here</a>

State	COVID-19 Withholding Guidance <sup>4</sup>	Citations
St. Louis	Employees working remotely due to COVID-19 should be treated as working in their principal place of work for Earnings Tax purposes. Employers should withhold on the employees as they did prior to the temporary relocation.	<a href="#">Click here</a>
Montana	No COVID-19 guidance specific to withholding released.	N/A
Nebraska	DOR will not require employers to change the state which was previously established in the employers payroll systems for income tax withholding purposes for employees who are now telecommuting or temporarily relocated to a work location within or outside Nebraska due to the COVID-19 pandemic. A change in work location is not required beginning with the date the emergency was declared, March 13, 2020, and ending on January 1, 2021, or 30 days after the end of the declared emergency.	<a href="#">Click here</a>
Nevada	N/A	N/A
New Hampshire	New Hampshire, a state with no income tax has filed a lawsuit against Massachusetts in the U.S. Supreme Court claiming Massachusetts did not have authority to impose state withholding on New Hampshire residents working and residing in the State of New Hampshire. Nine additional states have filed briefs in support of New Hampshire. The U.S. Supreme Court has not provided information on whether or not they will take up the case.	<a href="#">Click here</a>
New Jersey	<p>New Jersey sourcing rules dictate that income is sourced based on where the service or employment is performed based on a day's method of allocation. During the temporary period of the Covid-19 pandemic, wage income will continue to be sourced as determined by the employer in accordance with the employer's jurisdiction.</p> <p>The New Jersey Division of Taxation would not require employers to change employee work state set-up for employees in their payroll systems who are not telecommuting or are temporarily relocated at an out-of-state employer location for this temporary situation. However, employers should consider their unique circumstances and make that decision. Relief for under-withheld tax, penalties, and/or interest for employers during this time period may be granted on a case by case basis if circumstances warrant.</p>	<a href="#">Click here</a>
New Mexico	No COVID-19 guidance specific to withholding released.	N/A
New York	<p>If you are a nonresident whose primary office is in New York State, your days telecommuting during the pandemic are considered days worked in the state unless your employer has established a bona fide employer office at your telecommuting location.</p> <p>There are a number of factors that determine whether your employer has established a bona fide employer office at your telecommuting location. In general, unless your employer specifically acted to establish a bona fide employer office at your telecommuting location, you will continue to owe New York State income tax on income earned while telecommuting.</p>	<a href="#">Click here</a>
North Carolina	No COVID-19 guidance specific to withholding released.	N/A

State	COVID-19 Withholding Guidance <sup>4</sup>	Citations
North Dakota	<p>If the telecommuting is attributable to a COVID related response and is intended to be temporary, North Dakota will not assert income tax nexus on that basis alone.</p> <p>Please note that North Dakota does not specifically address an employer's wage reporting and withholding obligation.</p>	<a href="#">Click here</a>
Ohio	No COVID-19 guidance specific to withholding released.	N/A
Ohio - Local	Am Sub H.B No 197, has waived the "20 day rule" during the health emergency plus 30 days. Employers should continue to withhold employee tax from an employee's principal place of business, despite the home location.	<a href="#">Click here</a>
Oklahoma	No COVID-19 guidance specific to withholding released.	N/A
Oregon	<p>The Department of Revenue announced that for purposes of Oregon corporate excise tax and income tax, the presence of teleworking employees of a corporation in Oregon between March 8, 2020, and December 31, 2020, would not be treated by the department as a relevant factor when making a nexus determination if the employee(s) in question are regularly based outside Oregon.</p> <p>Please note that Oregon does not specifically address an employer's wage reporting and withholding obligation.</p>	<a href="#">Click Here</a>
Pennsylvania	<p>If an employee is working from home temporarily due to the COVID-19 pandemic, the department does not consider that as a change to the sourcing of the employee's compensation. For non-residents who were working in Pennsylvania before the pandemic, their compensation would remain Pennsylvania sourced income for all tax purposes. Conversely, for Pennsylvania residents who were working out-of-state before the pandemic, their compensation would remain sourced to the other state and they would still be able to claim a resident credit for tax paid to the other state on the compensation.</p> <p>For a Pennsylvania employer with a non-resident employee temporarily working from home due to the COVID-19 pandemic in a state that doesn't have a reciprocity agreement with Pennsylvania, the department advises that the employee's compensation remains Pennsylvania sourced, and the employer is required to withhold on the compensation.</p> <p>The above guidance will be in effect until the earlier of June 30, 2021, or 90 days after the Proclamation of Disaster Emergency in Pennsylvania is lifted ("End Date"). As of that End Date, the guidance above is rescinded and all prior tax rules are applicable.</p>	<a href="#">Click here</a>
Pennsylvania - Philadelphia	Non-resident employees based in Philadelphia are not subject to Philadelphia Wage Tax during the time they have been ordered to work outside of Philadelphia. Note, A non-resident employee who works from home for his or her convenience is not exempt from the Wage Tax – even with his or her employer's authorization.	<a href="#">Click here</a>

State	COVID-19 Withholding Guidance <sup>4</sup>	Citations
Rhode Island	<p>Under the emergency regulation, the income of employees who are nonresidents temporarily working outside of Rhode Island solely due to the pandemic will continue to be treated as Rhode Island-source income for Rhode Island withholding tax purposes.</p> <p>Rhode Island will not require employers located outside of Rhode Island to withhold Rhode Island income taxes from the wages of employees who are Rhode Island residents temporarily working within Rhode Island solely due to the pandemic.</p> <p>See examples in link.</p>	<a href="#">Click here</a>
South Carolina	Effective from March 13, 2020 through December 31, 2020, South Carolina will not use the temporary change of an employee's work location during the COVID-19 relief period to impose a South Carolina withholding requirement under Code Section 12-8-520. This relief does not apply to workers whose status changes from temporary to permanent status during this period. The state extended this through December 31, 2020 on August 26, 2020.	<a href="#">Click here</a>
South Dakota	N/A	N/A
Tennessee	N/A	N/A
Texas	N/A	N/A
Utah	No COVID-19 guidance specific to withholding released.	N/A
Vermont	Employers with remote workers in Vermont, on a temporary basis will not be required to change the employee's withholding state. The nonresident temporarily living and working in the state may have an obligation to pay Vermont income tax.	<a href="#">Click here</a>
Virginia	No COVID-19 guidance specific to withholding released.	N/A
Washington	N/A	N/A
West Virginia	No COVID-19 guidance specific to withholding released.	N/A
West Virginia - Charleston	An employee shall be considered employed and subject to the user fee so long as the employee remains on the current payroll of an employer deriving compensation and the employee has not been permanently assigned to an office or place of business outside the city.	<a href="#">Click here</a>
Wisconsin	<p>Wisconsin's withholding tax requirements regarding wages paid to an employee have not changed.</p> <p>Although Wisconsin has not changed its methods of determining income tax on wages or employer withholding tax during this national emergency, employers and employees may be subject to different tax requirements when an employee telecommutes from his or her home instead of working at the employer's business location.</p>	<a href="#">Click here</a>
Wyoming	N/A	N/A

Notes:

1. All advice as of 2/02/2021
2. Compensation is for wages earned as an employee unless otherwise noted
3. An employee should be subject to withholding in the regular work state under the convenience of the employer rule if the employee is performing services remotely for a reason other than the requirement of the employer  
These states may have specific rules or factors that should be reviewed to determine if the convenience of the employer is met
4. States that already have teleworking/withholding rules prior to COVID-19 are assumed to have the same rules unless the state provided new guidance

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COVID-19 GUIDANCE NOTE: This table provides a summary of published guidance on the state income and unemployment tax changes in light of the novel coronavirus COVID-19. Please note that there will likely be additional developments that are released after this publication date or otherwise not captured here. This document does not express KPMG's opinion on the likelihood of whether late-filing or other penalties may be waived.

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