



Conquering Tax Withholding Challenges: Best Practices & Legislative Updates

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Today's Presenters



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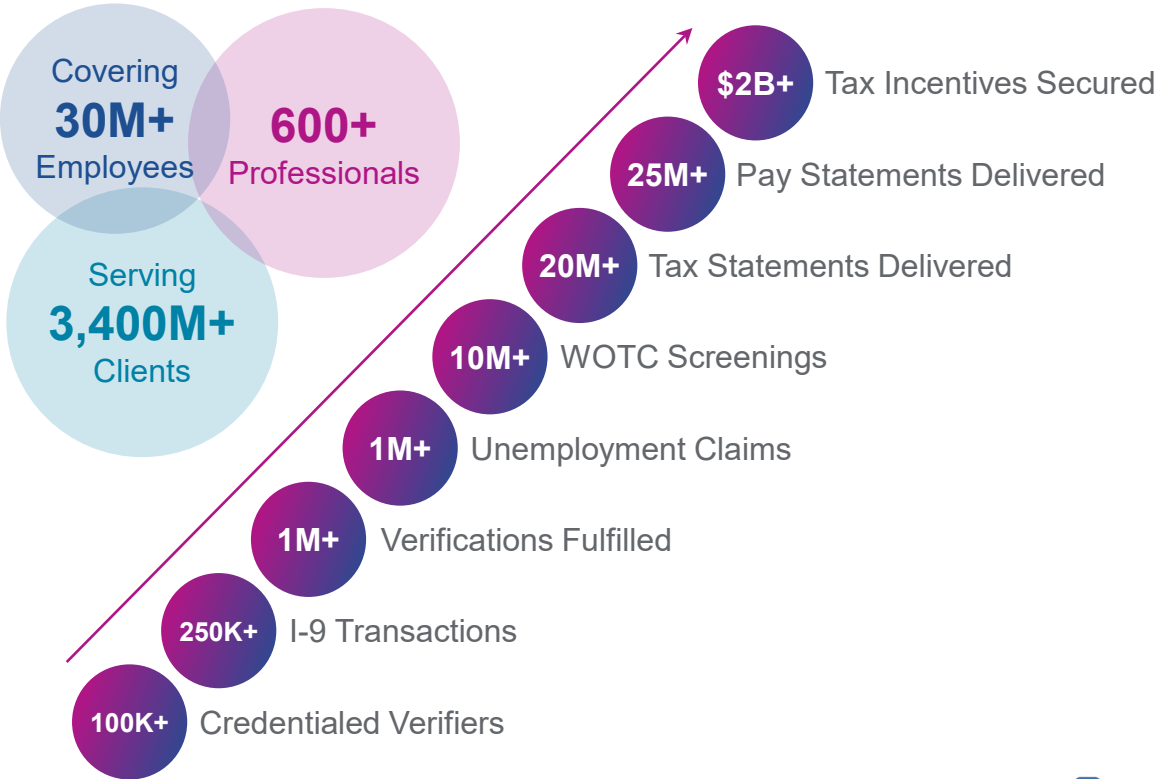
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Agenda

- Tax Withholding Recent Background
- Challenges of Hybrid/Remote Workforce
- Complexities of Nexus and Reciprocity
- Key Takeaways
- Q&A



Poll Question 1

Which level of holding causes your organization the most headaches?

- Federal
- State
- Local
- All of them, do we really have to do this?



Key Developments in Withholding

New Form in 2020 and COVID pivot to Remote/Hybrid Work

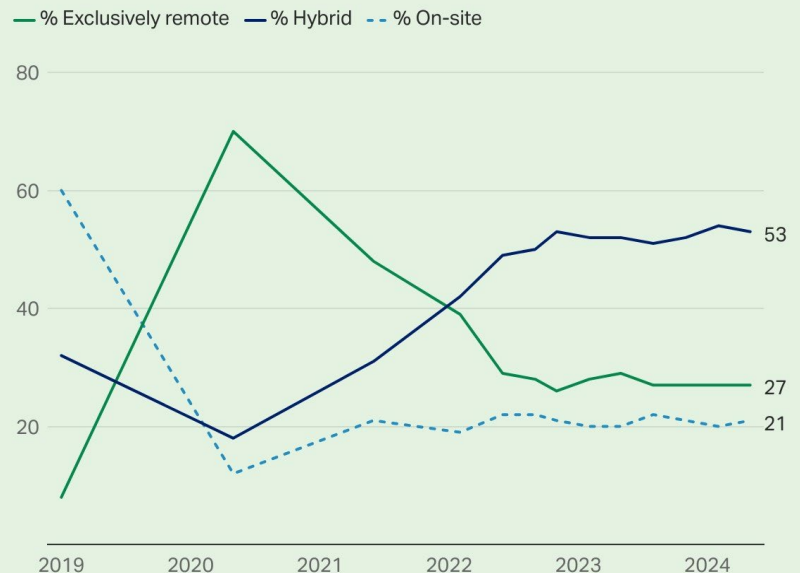
- Form W-4 changed in 2020 to account for changes made by the Tax Cuts and Jobs Act
- Removed personal exemptions, raised Standard Deduction, expanded Child Tax Credit
- New form introduced, emphasis on accuracy, altered form to align with new law, easier to understand
- COVID brought further attention to withholding processes with propensity of remote work
- Lack of commuters raised new questions



Overwhelming Support for Remote/Hybrid Work

Work Locations for U.S. Employees With Remote-Capable Jobs

Employees are returning to the office — but with more remote work flexibility than ever.

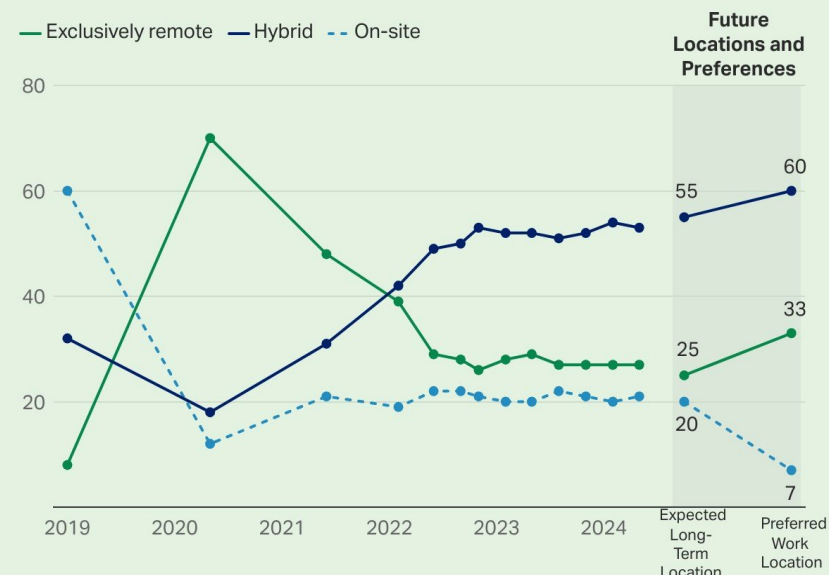


Data are among U.S. full-time, remote-capable employees.

GALLUP

Over Half of U.S. Remote-Capable Employees Expect and Prefer Hybrid Work

% Remote-capable employees working (or expecting or preferring to work) at each location



Dates that appear when hovering over "expected" and "preferred" data are placeholders for purposes of data visualization. Those data are from May 2024 surveys of U.S. full-time, remote-capable employees.

GALLUP

[Gallup: Indicators: Hybrid Work](#)

Challenges of Withholding for Remote Employees

- Complexity of State Tax Regulations - each state has own rules on treatment of commuters, and creation of an employer presence
- Lack of Reciprocity Agreements
 - absence adds a degree of difficulty
 - Today, 17 jurisdictions have some form in place
 - Home state taxes, employee fills out exemption/reciprocity form in work state
- Evolving Tax Nexus Considerations - new physical location of employees may raise new tax considerations in a state
- Patchwork of Local Tax Requirements - Over 4,900 local jurisdictions regularly modified to meet jurisdictional needs, i.e. COVID

Tax Nexus and Remote Work

State Thresholds

Each state has its own rules on the tax nexus threshold for telecommuters – e.g. California is \$500,000 in sales, Colorado is \$100,000

COVID-19 Impacts

During the COVID-19 pandemic, some states issued guidance that temporary telecommuting would not create a tax nexus, while others took different approaches

Reciprocity Agreements

Reciprocity agreements between states can help avoid double taxation for remote employees, but not all states have these agreements in place

Evolving Regulations

State tax regulations around telecommuting and tax nexus are constantly evolving, requiring employers to stay up-to-date

Convenience Rule

Several states like New York have a 'convenience rule' where tax must be withheld if an employee works outside of the state for convenience rather than necessity

Temporary Presence Rules

- Can carry complex tax implications depending on which state employee is temporarily working in
- Generally state requirements kick in after specified time or specific amount earned in state
- Bills passed to address this over COVID illustrate levels of employer headaches
 - West Virginia passed 30-day threshold in 2021
 - Utah passed a 20-day threshold bill in 2022
 - Montana enacted a 30-day safe harbor rule enacted in 2023



Convenience of Employer Rule

Several states have Convenience of Employer Rule in Place:

- Determines where remote employees pay tax
- Remote employee must have "bona fide need" to shift tax burden
- Employees not meeting the test criteria are remote at COE
- Jurisdictions applying some form of COE rule include:
 - New York, Arkansas, Delaware, and Pennsylvania more general
 - Connecticut, Massachusetts, and New Jersey, specific circumstances

New Hampshire v Massachusetts

- Emergency Regulation passed in Mass to address commuters
- 80,000 commuters continued to pay while remote
- NH sued, claiming unconstitutional
- Supreme Court declined to hear



Poll Question 2

Our organization actively tracks court cases as part of our Compliance Program.

- ☐ True
- ☐ False

Compliance Basics

- Determine location of remote employees and tax obligations prior to movement
- Ensure employees are presented and complete all applicable tax documentation for the relevant jurisdiction
- Calculate amounts to be withheld
- Register with relevant tax authorities where required
- Report and remit taxes to appropriate authorities



Keys to Maintaining Compliance

- Communication - employees need to be aware of the process and the "why" behind it
- Multi address allocation form to provide estimates for multi-jurisdiction employees
- Track employee movement
- Monitor applicable laws and regulations across all jurisdictions
- Automate processes where possible
- Provide remote employees with a checklist to help them understand local tax requirements and other benefits guidelines



Poll Question 3

Which area of compliance is most difficult for your organization to follow?

- Federal laws and regulations
- State laws and regulations
- Local ordinances and regulations
- We struggle with all of them



Keys to Maintaining Compliance

Patchwork of Federal, State, and Local Laws

- Employers need to efficiently assess which laws/regs apply to them and be able to implement those into any affected processes
- Many employers do not have employees to do this ... automate where possible
- Many tools have subscription fees ... many do not
- Those with budget should opt for expert assistance with these items - vendors who do this as their focus
- Other options include industry newsletters, aggregators of employment law topics, and law firm newsletters, blogs and webinars



Keys to Maintaining Compliance

Responsibilities Ongoing

- Not just an onboarding activity; Employees need access to adjust for increases in income and/or a "life changing event"
- Ensuring updated forms are presented as needed
- Administration of "lock-in letters"



Keys to Maintaining Compliance

Track Employee Movement

- Knowing where employees are is a key to presenting required compliance notices and applying correct withholding
- Employee allocation sheet is a best practice for those working across multiple jurisdictions for withholding purposes



Keys to Maintaining Compliance

Create A Compliant Culture

- Document processes in as simple, yet detailed, mode as possible (SOPs for everyone!)
- Train employees involved in complaint processes on a regular basis, and also document
- Engage in regular self-audits to ensure compliance of processes; remediate where and if possible
- Ensure central oversight for outposts; out of sight should not = out of mind for compliance purposes
- Good faith efforts at compliance can go a long way in official audits



Cost of Non-Compliance

- IRC § 6672 provides for assessment and collection of a 100% penalty against responsible corporate officers or employees who willfully fail to collect and pay over, or attempt to evade, any employment taxes
- IRC § 7202 provides that such willful failure is a felony, carrying a fine of not more than \$10,000 and/or five years' imprisonment
- State laws also have penalty provisions—check each jurisdiction for specifics, (late filing penalties are in most states, for instance)
- Bad Faith operations lead to expanded audits and/or audits by other agencies



Key Takeaways

- Ensure remote/hybrid employees report employee movement
- Stay current on all applicable federal, state and local compliance requirements
- Ensure you are employing automated tools & services to streamline your compliance workflows wherever possible
- Provide your HR administrators with proper visibility into compliance activities occurring throughout your organization



Poll Question 4

As a multi-state employer, which state process(es) cause you the most headaches?

- Onboarding Forms
- Tax Withholding
- Required postings for employees
- Other – Not a Multi-State employer



Questions?



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