



# TaxNewsFlash

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## KPMG report: Nonresident state income tax withholding, cross-border business travelers

The role of U.S.-based cross-border business traveler is growing with today's increasingly mobile business environment. Consequently, the ability of multistate employers and their third-party providers to proactively manage the overall compliance issues associated with domestic, state-to-state, and short-term travel is vital to bringing together both business and regulatory demands. Add to the equation various types of income—including base compensation, bonus payouts, and equity compensation—and the job of accurately tracking and taxing mobile employees can quickly become onerous and technically challenging.

Properly managing and tracking a mobile workforce can further complicate the already difficult payroll tax reporting processes dictated by a large geographic footprint. With a wide variety of complex rules governing state withholding—including varying de minimis treatment, reciprocal relationships, and specific reporting methodologies—it is not surprising that many employers have found compliance on a state-by-state basis particularly challenging. Layer onto that the increasingly common position of telecommuters and work-at-home employees, and the employment tax diligence requirements continue to expand.

So what happens when a state taxing authority walks in the door looking to audit on these issues? If an organization is not "multistate compliant," the company could be liable for unpaid individual (personal) income taxes, as well as penalties and interest.

While many states put emphasis on the issue during the audit process, New York has the most well-defined audit structure that specifically addresses the nonresident withholding and taxation issue. Defending such an audit can be time consuming, complex, and often a losing battle if an employer is not prepared. State tax authorities will request, and expect an employer to be able to obtain, records specific to each employee's global and state travel that touched the state of audit. Because companies generally reimburse for travel-related expenses (such as hotel stays, flight receipts, car rentals, etc.) the records are there—and the tax authorities will request them. Limiting exposure with respect to these nonresident employees is often a matter of sample size negotiation, arguing each individual employee potentially included, and degrees of compliance.

Building a system to properly “track” employee travel and tax accordingly could help a company avoid the effects of an audit, and properly adhere to state laws and requirements. The creation of internal processes and procedures to gain control of a mobile employee base can be extremely complex, with many items to consider such as how to physically identify when and where employees are traveling; how to properly tax all types of compensation (including base, bonus, equity, etc.), and who will bear the costs of the additional tax. As a result, the efforts, costs, and individual employee implications of implementing a compliant system and program are often a barrier to the proper solution, leaving many employers to play the audit lottery on the issue.

Federal legislation has been introduced in the Senate (S. 604, The Mobile Workforce State Income Tax Simplification Bill) to implement a standardized set of rules to help in compliance; however, substantially similar legislation has been introduced in essentially the same format in several recent Congresses, but to no avail. As such, it may be up to employers and the state taxing authorities to sort through the issues locally, and build compliance methodologies that are acceptable to all.

Read an [October 2019 report](#) or listen to a related podcast from KPMG LLP.

For more information, contact a KPMG tax professional:

Scott Schapiro | +1 703 286-8267 | [sschapiro@kpmg.com](mailto:sschapiro@kpmg.com)

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