

Uniform Withholding And Unemployment Tax Wage Base Act
April 5, 2002
COMMITTEE DISCUSSION DRAFT #1

Uniform Wage Withholdings Act

FOR DISCUSSION PURPOSES ONLY

**NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM LAWS**

April 19, 2002

With Reporter's Notes

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ON UNIFORM LAWS

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DRAFTING COMMITTEE

The Committee appointed by and representing the National Conference of Commissioners on Uniform State Laws in preparing this Uniform Withholdings and Unemployment Tax Wage Base Act consists of the following individuals:

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UNIFORM WAGE INCOME TAX WITHHOLDINGS AND UNEMPLOYMENT INSURANCE TAX ACT

I. PRELIMINARY REPORTER'S NOTES FOR THE COMMITTEE

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Report Approach: As discussed in the below, the Internal Revenue Service and other agencies have been engaged for the last few years in a project to analyze the statutes governing FICA and FUTA on the federal side and state income tax withholding and unemployment tax requirements on the state side. The purpose of this review has been to study the possibility of harmonizing the various provisions in a way that will reduce costs of compliance and administration. As part of their study they have analyzed and compared hundreds of federal and state provisions to determine the existing state of harmony or differences in the way various items of income are treated by the various jurisdictions.

This Committee's work will be in large part based upon the data derived from this federal study. That data is an objective and thorough comparison of provisions, without any commentary, regarding suggestions as to how or if the seeking of harmony should proceed. In addition this Committee will have the opportunity to review the analysis and suggestions made by the federal project, however, unlike the data, the evaluations of the data can be considered or ignored as the Committee so chooses.

You are being asked to consider the efficacy and efficiency of providing a statutory construct in each of the States that is similar enough to all the other States that compliance with the statutory compliance requirements will be essentially the same in each State and, within each state, the statutory compliance requirements will be essentially the same for both the income tax withholding regime and the unemployment tax regime. In other words, you are being asked to consider recommending the use of similar, if not identical, wage bases for both these purposes so that knowledge of one code is tantamount to knowledge of all codes.

The Committee's project is complex because of the cross jurisdictional issues as well as the fact that the harmonization process needs to include two different policies within each single jurisdiction: income collection on the one hand and benefit funding and dispersal on the other. This problem is further complicated in an attempt to bring cross jurisdictional harmony by the fact that each of these policies may have different but significant nuances in the various jurisdictions. As you are reviewing this document might I suggest that you keep a few issues that the Committee will need to address. Other issues will no doubt arise during the Committee's deliberations, but these issues will no doubt face us; and those are:

1. Should the Committee recommend harmonization at all?
2. Should the Committee recommend harmonization of the unemployment laws

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across jurisdictional lines?

3. Should the Committee recommend harmonization of the income tax withholding laws across jurisdictional lines?
4. Should the Committee recommend harmonization of the income tax withholding laws and the income tax withholding laws within each state and among the states?
5. Should the Committee's recommendations be limited to the 14 items of the Targeted Harmonized Wage Code or should it attempt to harmonize most, if not all, of the items reviewed.

Project Background: The purpose of this project is to consider the development of a statutory construct that, if adopted by the states¹, will create (1) substantial conformity between each state's income tax wage base and that same state's unemployment insurance wage base as well as (2) substantial conformity of those wage bases among the states². The goal to be reached if conformity is achieved is substantially reduced compliance costs for employers and government agencies responsible for collecting the withholding taxes and unemployment insurance taxes.

The fifty states, the District of Columbia, and the federal government have a total of 96 different employment tax laws. Within the 96 employment tax laws, there are almost 500 different components or provisions. Employers must maintain separate wage records for federal income tax withholding, state income tax withholding, the federal insurance contributions act (FICA), the federal unemployment tax act (FUTA), and state unemployment insurance (SUI) taxes. *In many cases, employers must report this information to government agencies at*

¹ For purposes of this discussion the term "states" is intended to include the District of Columbia. No slight or political motive is intended by this all inclusiveness, rather the purpose is simply ease of reference.

² There are 43 different federal and state income tax codes and 53 social welfare tax codes.

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different times, on different forms, and on assorted media. ...

In addition to requiring employers to report tax-and wage-related information, employment tax laws require government agencies to process the information reported, verify that the information complies with the laws, work with employers to correct reports and do not comply, and provide assistance to employers attempting to comply. The diversity in current laws and filing dates makes it difficult for government agencies to provide consistent, accurate, and timely service to their customers.

The diverse state and federal laws governing wage taxes and withholding significantly increase employer burden....³

The Internal Revenue Service, in 1996, commenced a study which they termed the Harmonized Wage Code Project for the purpose of developing a data base upon which recommendations for such a code

³ The Harmonized Wage Code For Income Tax Withholding (HWC/ITW), January 2001, at 1-1. (Emphasis Added) (hereinafter referred to as 2001 HWC/ITW). The project has or will issue at least three different reports. The one cited here focuses on inter-jurisdictional harmonization of income tax withholding statutes. Two soon to be published reports will focus on inter-jurisdictional harmonization on unemployment insurance tax (referred to in this Committee's proceedings as the "HWC/UI" report) and on inter-jurisdictional filing date harmonization (referred to in this Committee's proceedings as the "HWC/FD" report). All the reports deal, or will deal, only tangentially with intra-jurisdictional harmonization of income tax withholding and unemployment insurance provisions. When making reference to a combined HWC/ITW report and HWC/UI report this Committee's proceedings as the HWC report. Additionally, reference will be made in this document to a recommendation in the HWC/ITW report referenced therein and herein as the Targeted Harmonized Wage Code (hereinafter sometimes referred to as "THWC".)

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could be made⁴. That data base is the foundation for the this Committee's deliberations. The study was conducted by a working group the project manager of which was Mr. Philip Corn and consisted of members 26 members from various states' agencies, professions, private companies and federal agencies⁵. The project is still ongoing and, in addition to various reports, it has developed a comprehensive data base located at [SITE TO BE DETERMINED]. The data located at this cite together with its search engine will make analysis of the issues by this Committee far easier than it would have otherwise been. In fact, without this data base, it is unlikely that the National Conference of Commissioners on Uniform State Laws would have undertaken this uniform law project.

Conflicting Policies: As the Committee discusses harmonization it is important that it keep in mind the conflicting policies pursued by the income tax withholding laws and the unemployment insurance laws. The purpose of the income tax withholding laws is primarily to establish a procedure by which taxes are to be collected and secondarily assist in the characterization of certain income⁶ while the unemployment tax structure is intended to raise revenue from employers for a specific employee benefit,

⁴ This project was initiated and continues to be conducted under the auspices of the Simplified Tax and Wage Reporting System Program Office ("STAWRS"). Though directed out of the offices of the Internal Revenue Service this office is supported by the Departments of Treasury and Labor as well as the Social Security Administration.

⁵ A list of members can be found at Exhibit B to the 2001 HWC/ITW.

⁶ Though at first blush it might appear that the income tax withholding provisions of a state statute may have something to do with the determination of taxable income by defining factors such as wages and employee, the fact is these definitions are important (from the perspective of income tax) only for determining whether a payer of income is required to withhold income taxes or whether the payee has the responsibility of paying owed taxes directly to the state. Whether an item of income is wages or some other form of income is irrelevant to the question of whether it is income. That is an issue with which the income tax withholding provisions do not deal.

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and most importantly, to provide a basis upon which benefits are paid out⁷. Thus, unlike the income tax withholding provisions, the unemployment insurance provisions impose a direct cost of taxation on a specific taxpayer the assessment of which is dependent upon whether a payment by that employer is a wage paid to an employee⁸. The result of this conflict of policies is not only the obvious question of employer cost, but the somewhat less obvious interests of states' unemployment benefit paying agencies to broaden the definition of compensatory payments made by a hiring entity to an individual as wages paid to an employee.

⁷ In the Department of Labor's recent report evaluating the THWC DOL's consultants stated: "Unlike revenues the impact ... [of the THWC on unemployment] claimant benefits are not directly linked to the taxable wage base. Rather, they are more closely related to workers' occupations, industries in which they are employed, and their level of earnings." de Silva, *et. al.*, **The Impact of the Targeted Harmonized Wage Code on Unemployment Insurance**, report to the DOL and IRS, at iv (November 2001) (Hereinafter referred to as "the Planmatics report.")

⁸ There are many sub-issues hidden in the concepts of "wages" and "employee." The question of whether one is an employee or an independent contractor is critically important for a number of reasons including, for our purposes, the question of whether the employer is liable for an assessment of unemployment insurance or FICA on the amount paid to an individual. The classification of an individual as employee vs. independent contractor is far beyond the scope of this Committee's charge (thank goodness!!) and is one that continues to be only partially resolved, at least at the federal level. Additionally, there are similar classification issues in regard to whether a partner is performing services for the partnership as an employee or as a partner and whether a corporate officer-significant stockholder is an employee for unemployment tax purposes.

Also, the question of whether a payment to an employee is a wage or something else is of critical importance. For example, a reimbursement of an expense incurred by an employee on behalf of an employer is clearly not a wage, yet its mis-classification as a wage may result in an additional cost to the employer of a state's assessment of unemployment insurance taxes or premiums.

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Consequently, any attempt to harmonize the income tax withholding provisions with the unemployment insurance provisions within a given state will have to recognize the difficulty of dealing with these two different policy concerns. The difficulty of harmonizing the withholding and insurance provisions among the various states is multiplied by 51. Nonetheless, the attempt should be made and the states should be encouraged to adopt appropriate changes to their respective laws.

On the other hand, it appears that harmonizing the income tax withholding provisions among the states that impose an income tax is more easily accomplished. Though there are differences among the states as to various definitions, there is already significant similarity between existing statutes making the harmonization process less problematic. However, filing dates are a significant issue in this arena.

Compliance costs are high: Reporting complexities are very costly to everyone. Small employers must attempt to understand sometimes subtle distinctions, have knowledge of a large number of definitions and attempt to understand the different requirements of them for two different codes within their state. Large and small employers that do business in more than one state must deal with these issues in each state and the administrative complexities caused by multi-jurisdictional differences. States must maintain two separate taxpayer auditing capabilities (and staffs) to insure compliance with two separate laws.

On the other hand, each state has its own unique issues with which to deal, and thus policy compromises with other jurisdictions or within a single state to reduce complexity may not be appropriate. However, it is not unreasonable to assume that much, if not all, of each state's legislation dealing with income tax withholding and unemployment insurance tax assessment is done without consideration of other jurisdictions or even other statutory schemes within the same state. Consequently, a review by each jurisdiction, with the assistance of a uniform law drafted by this Committee, may cause the various states' to realize they are able to make modifications to their laws which, while making little if any policy compromises, will assist in the cost reducing simplifications of more uniform assessment and collection practices.

Though it will be impossible to construct a single code that will conform each state's income tax withholding and insurance tax provisions or that will cause the various states' codes to conform to the other states', it is quite possible to find sufficient areas of compromise to substantially reduce compliance burdens for states and for employers in general and small employers in particular.

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"Eighty-five percent of employers of the 6.7 million employers in the United States employ 20 or fewer workers. ... [T]hese 'small' employers deal with fewer of the component provisions found in ... federal [and state] employment tax laws."⁹ For these employers, most of which do business in a single state, great relief from compliance burdens would be realized if there was harmonization of the most common elements of compensation because it is with those that they deal almost exclusively. Even for large employers and those doing business in more than one state the harmonization of the most common elements of compensation would provide significant alleviation of compliance complexity. The more the various codes can be harmonized the greater taxpayer and governmental compliance relief.

The Targeted Harmonized Wage Code: The Targeted Harmonized Wage Code ("THWC") developed by the IRS and the STAWRS project consists of the fourteen most common elements of wages¹⁰. It is the Service's view that these elements, if harmonized throughout the income tax codes of all states

⁹ HWC/ITW, *supra*, note 3 at 1-7 [footnote omitted]. The accompanying note points out that "15% of the 'large' employers employ more than 50% of all workers in the U.S.", and further, the components of their employees' wages are far more complex than those of small employers. Consequently, harmonization among the states and, ideally the states and the federal government would have a dramatic impact on the compliance complexities faced by all employers but probably a greater impact on the country's largest employers. However, as pointed out in a study conducted by an outside contractor to the STAWRS group, though "small" employers, "[a]s a group... generally deal with a smaller number of wage components ... [they], in the aggregate, bear the greatest per employee costs associated with the payroll reporting process." Planmatics report, *supra*, note 7 at 5.

¹⁰ The fourteen items set out by the IRS to be excluded from the withholding tax wage base are (in no particular order of importance): vacation pay, compensation for jury duty, employer provided meals and lodging, group term life insurance, dependent care benefits, tips, employee business expense reimbursements, health insurance, cafeteria plans, moving expenses, death benefits, sick pay, fringe benefits and contributions to qualified retirement plans.

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and federal government would be a good first step in simplifying filing requirements. The preliminary statutory provisions contained in this draft to the Committee takes the suggestion of the IRS one step further. It suggests that the Committee consider that these fourteen points be adopted not only by the various states in determining their income tax withholding wage base but also be adopted by them to determine their unemployment tax wage base. Because these fourteen items are the most common forms of remuneration for employees' services a large majority of employers will be directly, and positively, impacted by this conformity. Hopefully, this structure will also simplify the compliance process and administration of reporting for large and intra-state employers by making the number of their wage components effecting the majority of their employees the same for all jurisdictions and both wage bases.

States may balk at conforming even their own income tax and unemployment tax wage bases let alone conforming those wage bases to other states and, possibly, even the federal withholding and FICA wage bases for a number of good reasons. Two of these reasons is that conformity will most likely lead to a loss of revenue, and conformity will reduce benefits in some¹¹ The Plantonics report set out the following example in explaining the revenue impact of reducing the unemployment insurance wage base:

To illustrate the impact on tax revenues, consider the following: An employer has an employee in state A and an employee in state B and each earns \$20,000 per year. State A has a taxable wage base of \$10,000 as opposed to state B's \$21,000. (Taxable wage base is that portion of an employee's total wages subject to SUI tax [and may not

¹¹ Anything that reduces the taxable wage base potentially can result in loss of benefit because the base upon which benefits are calculated will be reduced. For example, in California benefits are calculated based upon minimum wage payments during a base period of between \$900 and 1,300 depending on certain variable (Cal. Unemp. Ins. Code §1281). Anything that lowers amounts considered as wages under the unemployment insurance regime, therefore, will go to lower, or possibly eliminate benefits.

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be the same as that employee's income tax wage base].) Consider as well that the reduction in taxable wages resulting from these definitional changes is \$1,000 per year. There would be no impact in state A inasmuch as the portion of the employee's taxable wages would be unchanged. However, in state B taxable wages would be reduced from \$20,000 to \$19,000 and there would be a commensurate reduction in tax paid by the employer.

When considering worker unemployment benefits, there are two types of impacts that can occur. First, there are minimum earning levels in each state that must be met before an employed worker becomes eligible for benefits. If any reduction in wages would drop a worker's earnings below the minimum earnings level, that worker would no longer be eligible for benefits...

Second, and more likely, is the potential reduction in weekly benefit amounts (WBA). These amounts are calculated on a worker's earnings, generally a combination of annual earnings and high-quarter earnings. Any reduction of annual or high-quarter earnings reduces the worker's WBA...¹²

Though traditional contributions might be diminished and benefits reduced under some circumstances, it does not appear that the amount of loss of revenue or aggregate reduction in benefit payments will likely be dramatic if the fourteen items of income are harmonized within a state and among the states and federal government. However, it is possible that at least as to reduction of benefits, the though the macro problems will not be significant, the micro problems could be devastating. The dollar

¹² Planmatics report, *supra*, note 7 at 10-11] The Planmatics report studied the impact of harmonizing the 14 items in twelve states: California, Connecticut, Georgia, Iowa, Louisiana, Mississippi, Minnesota, Montana, Nevada, New Jersey, Pennsylvania and Texas. *Id.* at 14.

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amounts of benefits paid to any one individual, or individuals within any single employee sector, may be reduced by a significant percentage or eliminated altogether.¹³

This draft recognizes that some jurisdictions may determine that complete conformity is not possible or desirable. Thus, a provision is made to add back components to either or both wage bases those items that are not included in a jurisdictions "conformed" provisions but the inclusion in one or the other tax base is deemed necessary. This may be viewed as simple window dressing because it would appear on its face not to result in any consequential changes to what already exists inter and intra-state. However, there are some advantages even to the "add-back" regime. First, it is hoped that many, if not all, states can be convinced that total conformity is in their best interest; that compromises that reduce

¹³ The most controversial recommendation of the HWC Project is that dealing with 'meals and lodging.' ... Most states...[concur with the IRC §119 exclusion of meals and lodging from the income tax wage base], but about one-third of the states include 'meals and lodging' for UI purposes. This recommendation has caused a great deal of concern ... [in those states that do not exclude meals and lodging for their unemployment insurance wage base] primarily because of the possible impact such payments if made excludable might have on the amount of revenue available and the payment of benefits."

The Targeted Harmonized Wage Code, Internal Revenue Report, August 2000, at 2-8. Hereinafter referred to as the "THWC" report.

The 23 states that do not exclude meals and lodging from the unemployment insurance wage base (including California) have more than 26% of the countries work force. "...California's data indicate the average benefit claim over its duration is \$2,422 and the average value of the exclusion of the meals and lodging component on affected claims is \$487, amounting to 20% of the claim of the workers affected. This percentage of reduction, or one close to it, could occur in New Jersey, New York and Texas as well." Planmatics at v.

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the revenue raising capacity of their unemployment tax provisions can be at least off-set against private and governmental administrative savings. Even if this benefit is not found to be extant or compelling, it is thought (at least by the Reporter) that the format of general exclusion of these fourteen items from the definition of wages under either the withholding or unemployment tax wage bases together with a format for adding back items as necessary will make compliance far easier for employers. It is thought that this format will permit the drafting of forms that will be easier to deal with and far more self explanatory.

The suggested provisions also provides add back consideration for a large group of other items in the unemployment wage base. Whether these should be dealt with by this Committee is an issue that needs to be discussed, but a preliminary listing is attached as Exhibit B.

Reporting and Payment Schedule: The following outline deals briefly with the question of whether conformity within and among states of their reporting and payment dates should be recommended by this Committee. Ignoring transition problems (which may, in some cases, be insurmountable), common dates for compliance will greatly ease burdens imposed on multi-state employers. As one taxpayer put it when interviewed "...the fact that I have to send four different agencies every quarter is a real pain in the neck... I'd like to go to one place... [or] if I could do it electronically and just jet it to all four agencies at the snap of a button..."¹⁴

¹⁴ Planmatics, *supra*, note 7 at 18.

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- II. **SHORT TITLE.** This Act may be cited as the Uniform Wage Base Act.
- III. **WAGES DEFINED.** For purposes of this Act the term wages shall include all forms of remuneration, whether in cash or in a medium other than cash, paid for services to an employee by an employer¹⁵. Wages shall include, but shall not be limited to, the following payments made by an employer to an employee for services rendered to the employer:
- A. Level One Wages¹⁶

¹⁵ This provision anticipates the definition of employer and employee which will be the focus of some of the Committee's discussions.

In kind payments of wages ("medium other than cash") will be included at its fair market value at the time of payment to the employee by the employer. Cash, of course, will be valued at its face value. It is assumed that cash payments of wages made in a denomination other than United States currency will be its official exchange rate value as of the date of payment.

¹⁶ The term "Level One Wages" is adopted to reflect those components determined by the THWC project as the most common elements of compensation paid by employers to employees. As pointed out in the study [GET PROPER CITES(at 1-7 of the Aug. 2000 report (and BLS study))] 85% of US employers have fewer than 20 employees (*See, THWC, supra, note 13 at 1-7.*) Additionally, the elements of the Level One Wages are shared by most if not all employers.

The MAJORITY OF EMPLOYERS OWN SMALL BUSINESSES.

Eighty-FIVE percent of the 6.7 million employers in the United States employ 20 or fewer workers. It is also known that these 'small' employers deal with fewer of the component provisions found in all the state and federal employment tax laws. Thus, most small employers will not be concerned with many of the components, usually those involving more complex forms of remuneration.

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1. Level One Wages shall include, but shall not be limited to, the following items unless specifically excluded under Paragraph 2 of this Section:
 - a. Cash
 - b. Fair Market Value of property
 - c. Vacation Pay¹⁷
2. Level One Wages shall not include the following items paid to employees by an employer:
 - a. Cafeteria Plan: Any payment made to, or on behalf of, an employee or his or her beneficiary pursuant to an election by said employee or beneficiary under a plan meeting the requirements of Internal Revenue Code Section 125, or any successor thereto.¹⁸

Therefore, the project team looked at components that are most common among small employers and their employees...”

Id. [footnotes omitted]

The report also points out that “...15% of the ‘large’ employers employ more than 50% of all workers in the U.S.” Id.

¹⁷ Delaware is the only state in which vacation pay is not always an element of wages for purposes of both income tax withholding and unemployment insurance premium withholding. Delaware excludes as wages vacation pay paid during a period of unemployment.

¹⁸ This provision provides that benefits otherwise excludeable from an employee’s gross income and subject to income tax and unemployment insurance withholdings will not be considered includeable merely because of constructive receipt issues. Internal Revenue Code Section 125 permits taxpayers to select from a group of benefits provided by their employer. Individually, these benefits are permitted, under the Internal Revenue Code, to be provided on a tax free basis to an employer’s employees. Without the intervention of this code provision, however, the fact that employees have the opportunity to select which tax free benefit, from a variety of choices, they

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- b. Certain Meals and Lodging: The value of any meals or lodging furnished by or on behalf of the employer if at the time of such furnishing such value is excluded from the employee's income pursuant to Internal Revenue Code Section 119, or any successor thereto.¹⁹

prefer to have is sufficient to make these otherwise tax free benefits taxable under the doctrine of constructive receipt.

¹⁹ This provision excludes from income subject to income tax and/or unemployment insurance withholdings amounts that are excluded because they are items provided by the employer primarily because the physical location for the performance of services requires the employee to live and/or eat on the business premises. No state that imposes income taxes does not already provide such provision or, at least, a provision similar to IRC §119 for income tax withholding purposes. However, for unemployment insurance premium purposes there are 20 states that do not exclude these items from the employees' wage base. The Planmatics report, in commenting on the impact of the THWC, made the following point:

As expected, the major impact would be from the THWC recommendation of the *meals and lodging* provision that excludes the value of meals and lodging as designed in determining taxable wages and benefits for SUI purposes. At present, 23 states treat meals and lodging as wages in their laws and would be affected by this recommendation. These states include California (included in this study), New Jersey, New York, and Texas. They represent in excess of 26% of the nation's work force. In terms of impact on affected claims, analysis of California's data indicate the average benefit claim over its duration is \$2,433 and the average value of the exclusion of the meals and lodging component on affected claims is \$487,

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- c. Moving Expenses: Payment to, or on behalf of, an employee to the extent the employer shall reasonably believe that the payment will qualify for deduction (or portion thereof) under Internal Revenue Code Section 217 (as determined without regard to Internal Revenue Code 567).²⁰

amounting to 20% of the claim of the workers affected. This percentage of reduction, or one close to it, could occur in New Jersey, New York and Texas as well.

Planmatics report, *supra*, note 7 at v.

The same report pointed out that in California this reduction represents only "...about 0.2% of the total benefit outlay, it represents almost a 20% reduction for the 7600 affected claimants. Additionally, 660 claimants, or 0.1% of the claimant population would lose their eligibility entirely." Id. at 34. Of course, for those who have remuneration from their employers other than meals and lodging at or in excess of the maximum taxable unemployment insurance wage base the exclusion of the value of meals and lodging is of no consequence.

For those states which do not wish to conform their law to this provision, they will cause their state's employers to add back such amounts for purposes of the unemployment insurance premiums as provided at Section III.B.2 of this document.

²⁰ This provision provides for the exclusion from the wage base for purposes of income tax withholding and unemployment insurance premium withholding amounts paid for what are commonly referred to as moving expenses. No state that imposes income taxes does not already provide such a provision except for two states with no provision. However, for unemployment insurance purposes there are two states that do not provide this exclusion. For those states who do not wish to conform their law to this provision, they will cause their state's employers to add back

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- d. Group Term Life Insurance: Premiums paid for qualifying group-term life insurance on the life of an employee. For purposes of this provision the term qualified group-term life insurance shall mean amounts excludable under Internal Revenue Code Section 79 from an employee's remuneration subject to income taxation.²¹
- e. Medical Related Expenses: The amount of any payment (including any amount paid by an employer for insurance or annuities, or into a fund to provide for any such payment) made to, or on behalf of an employee or any of his dependents under a plan or system established by an employer which makes provision for his employees generally (or for his employees generally and their dependents) or for a class or classes of his employees (or for a class or classes of his employees and their dependents), on account of
 - (1) sickness if mandated under this state's workers' compensation law,
 - (2) sickness but only the amount of any payment or payments made after six consecutive months from the commencement of such payments due to sickness
 - (3) accident disability payments received under this state's workers' compensation law,
 - (4) medical or hospitalization expenses in connection with accident disability or sickness, or

such amounts for purposes of the unemployment insurance premiums as provided at Section ???.

²¹ There is no state that imposes either an income tax or an unemployment insurance tax that does not have either a provision similar to this provision or has no provision at all.

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- (5) death;²²
- f. Certain Payments Due to Death or Disability: Any payment or series of payments by an employer to an employee or any of his dependents which is paid -
 - (1) upon or after the termination of an employee's employment relationship with a given employer due to
 - (a) death, or
 - (b) retirement for disability, and
 - (2) under a plan established by the employer which makes provision for his employees generally or a class or classes of his employees (or for such employees or class or classes of employees and their dependents), other than any such payment or series of payments which would have been paid if the employee's employment relationship had not been so terminated.
 - (3) by an employer to a survivor or the estate of a former employee after the calendar year in which such employee died provided such payment is not considered income in respect of a decedent in accordance with [cite state law provision].
- g. Dependent Care Programs: Any payment made or incurred or benefit provided by the employer which affords an employee dependent care assistance pursuant to a qualifying dependent care program as set forth at [cite state law] if at the time of such payment or such provision of a benefit it is reasonable to believe that the employee will be able to

²² In general only income from sick pay or wage continuation plans maintained by the employer but not mandated by a state's workers' compensation law are included in an employee's income wage base for purposes of either income tax withholding or unemployment insurance premium withholding. Additionally, amounts paid due to an employee's death but are considered income in respect of a decedent are not excluded.

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exclude such payment or benefit from his or her taxable income.²³

- h. Certain Non-Medical and Non-Retirement Fringe Benefits: Any fringe benefit provided to or for the benefit of an employee or any cash reimbursement for any such benefit paid to an employee if, at the time of provision or reimbursement, it is reasonable to assume that such benefit shall be excluded from the employee's taxable income pursuant to [cite state code similar to Internal Revenue Code Section 132].²⁴
- i. Reimbursements for Employment Related Expenses: Any payment that is a reimbursement for expenses incurred on behalf of an employer or is an allowance provided by an employer for such expenditures, but not in

²³ This provision excludes the value of benefits provided under an employer provided dependent care plan providing non-discriminatory access to dependent care for young children and adults necessary to permit the employee to maintain employment. It is presumed that the state provisions will require a written, non-discriminatory plan similar to that required under Internal Revenue Code §129. Inclusion of this provision will require many states to adopt provisions not currently extant. Currently, 42 states have concurring statutes and 1 state has no provision (9 states have no income tax). On the unemployment insurance side of the ledger, however, only 15 states' statutes conform to these requirements. However, 35 states have no provisions dealing with this issue. Two states, Alabama and Michigan provide that payments made directly to the care giver or care facility are not wages to the recipient employee while benefits provided through a wage reduction plan are considered wages to the recipient employee (presumably because of some degree of constructive receipt).

²⁴ Of those jurisdictions imposing an income tax forty-two have provisions that provide this treatment for purposes of income tax withholding and one state has no provision. For purposes of unemployment insurance withholding only thirty-three states have provisions similar to this provision. Ten states currently have no or minimally matching provisions.

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excess of the amount actually incurred by an employee for such expenditures, that meets the requirements for proper and adequate substantiation under Internal Revenue Code Section 62(c).²⁵

- j. Payments to and From Pensions and Similar Arrangements: Any payments made to, or on behalf of, an employee or his beneficiary from or to a plan or plans described in Internal Revenue Code Section 3306(b)(5)(A) through (F).²⁶
- k. Tips: Gratuities, which in the aggregate for an employee do not exceed \$20 during any given month, paid by third parties or by an employer on behalf of third parties for services performed as part of the employment relationship.²⁷

²⁵ Though the THWC report indicates that all states provide this exclusion for both income tax and unemployment insurance tax purposes, there are numerous states that do not currently comply with the reporting requirements set out in the Internal Revenue Code. If those states should adopt reporting requirements similar to those mandated for federal tax purposes, no additional compliance costs would be incurred by employers or employees who are currently complying with the federal requirements.

²⁶ This provision deals with contributions to pension, profit-sharing and similar arrangements that meet the requirements for tax exemption under Internal Revenue Code Sections 501 and 401, *et. seq.* All states provide similar exclusions for both income tax and unemployment insurance tax purposes but the provisions for many states are complex and could be simplified.

²⁷ In general all the states already provide that tips are wages and that the employer has a duty to withhold and to make unemployment insurance contributions on those wages. This provision assumes that each state has or will have a reporting measure similar to the federal requirement that the employee provide a monthly statement in writing to the employer stating the amount of tips earned during the preceding month. Because services for which tips are a significant form of

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remuneration are more and more paid for via credit and debit cards the record keeping requirements for both employer and employee are somewhat less burdensome than they may have been when such payments were made in cash.

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B. Level 2 Wages²⁸

1. Additional Income for Certain Purposes: For purposes of assessing premiums or taxes on employers under this State's Unemployment Compensation Law and for purposes of calculating benefits for individual workers under said law, there shall be added to the amount of income calculated under Paragraph A. of this Article III those items listed at Section 2. this Paragraph B.

²⁸ Level one wages include all forms of compensation except those items which are specifically excluded or cannot be calculated (primarily *de minimus* benefits or what are considered working condition fringe benefits under the Internal Revenue Code.) For income tax purposes the provision is comprehensive. However, for unemployment tax purposes some states may feel that it is necessary to include in the wage base certain items that have been excluded for income tax purposes.

The reason for this different treatment is the result of the fact that the income tax is an income generating assessment whereas the unemployment compensation system is one in which benefits are paid out. Thus, for certain items, the states may consider items that are excluded for income tax purposes, because the utility of their inclusion is offset by the cost of acquiring the data necessary for accurate collection or because for various policy reasons certain items may not be wages for income tax purposes, should be considered part of a total compensation package upon which unemployment benefits are calculated.

The fact of different purposes for the income tax and the unemployment insurance provisions as well as different approaches to unemployment compensation among the various states has been part of the reason that the wage base is subject to so many similar but diverse statutory provisions. In an attempt to create a uniform definition of the wage base so that there can be conformity within a single jurisdiction and among all the states, the peculiar needs of each jurisdiction have been ignored in the development of Level One wages. However, these issues are dealt with by the add-back provisions discussed in this document as Level Two wages.

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2. Increases in Wage Base for purposes of Unemployment Insurance
 - a. The value of any meals or lodging furnished by or on behalf of the employer if at the time of such furnishing such value is excluded from the employee's income pursuant to Internal Revenue Code Section 119, or any successor thereto.²⁹
 - b. Expenses of moving paid to, or on behalf of, an employee.³⁰
 - c. Employer provided dependent care benefits provided to an employee either as a reimbursement for assistance in caring for children and adult dependents as set forth at [cite state law] or direct provision of such assistance.³¹

²⁹ This item is currently excluded for income tax purposes by all but one income taxing state. However, at least 20 states currently include this item as part of their unemployment insurance wage base. Because it is unlikely that most employers need to deal with this type of expense, and very unlikely that small employers are concerned with this type of expenditure, and, further, because even in those states where this is an inclusion for unemployment insurance but not income tax purposes, it will simplify the reporting and record keeping for most employers if this item is generally excluded but easily added back to the wage base for those states which deem it necessary.

³⁰ Certain of these expenses are deductible for federal income and most state income tax purposes. Most states provide that these expenditures, to the extent they are deductible for federal tax purposes under IRC §217, are also excludeable from their unemployment insurance wage base. There are currently, however, two states that do not exclude these amounts from the unemployment insurance wage base. For states wishing to include these amounts in this wage base, they are added back by this provision.

³¹ As discussed at footnote 23, *supra*, there is no consistent state pattern regarding inclusion or exclusion of these payments or benefits either for the income tax wage base or the unemployment insurance wage base. Though it is proposed above at subsection III. A.2.g. that these benefits should

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- d. Any fringe benefit provided to or for the benefit of an employee or any cash reimbursement for any such benefit paid to an employee even if, at the time of provision or reimbursement, it is reasonable to assume that such benefit shall be excluded from the employee's taxable income pursuant to Internal Revenue Code Section 132.³²

be excluded from the income tax wage base, there are different considerations for determining inclusion or exclusion of these benefits from the unemployment insurance wage base. For income tax purposes, at least at the federal level, IRC §129 provides, because it requires a non-discriminatory plan, an inducement to high paid individuals to encourage the maintenance of such a plan for all employees. Also, in general, it is fair to say that worker productivity should be enhanced (both through ability to concentrate on their work as well as their ability to be free from time consuming interruptions during the work day) if their dependents who need assistance are being provided adequate care and observation. From the perspective of unemployment insurance, however, the idea of reducing the wage base has been adopted only by 15 states. Most states have not addressed this issue by statute, and thus it is presumed that the amount in question are excluded. Two states have bifurcated treatment of these amounts by excluding amounts paid directly to care givers but including amounts set aside for these purposes under a wage reduction plan. Though it is hoped that states will adopt a general exclusion for these benefits for both income tax and unemployment insurance purposes, for those which do not, the amounts to be included in the unemployment insurance wage base will be added to the taxable income calculated under Section III.A.2., above.

³² Though, as noted above, all income taxing states match the federal exclusion for those purposes, twenty states either do not address or address negatively or in a marginal way the exclusion of what would be excluded fringe benefits under IRC §132 for purposes of their unemployment taxes. Presumably these states have an administrative policy excluding *de minimus*

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- e. The amount of any payment for illness or injury (including any amount paid by an employer for insurance or annuities, or into a fund to provide for any such payment) made to, or on behalf of an employee or any of his dependents under a plan or system established by an employer which makes provision for his employees generally (or for his employees generally and their dependents) or for a class or classes of his employees (or for a class or classes of his employees and their dependents), on account of illness or accident (but only to the extent that amounts paid exceed the amounts paid under the state's worker's compensation law).³³

and working condition fringe benefits (as defined at IRC §132). With the exception of Maryland and Pennsylvania, which also exclude qualified transportation expenses (though their definitions differ somewhat from the federal statute), these 20 states include in the unemployment wage base the items listed at IRC §132.

³³ This provision is an attempt to reconcile differences under various states' laws and the complexity within a given state's statute and the interpretation thereof. Though there appears to be substantial conformity among the various states and the states and the federal government excluding these items from the income tax base, there is substantial non-conformity regarding the inclusion and exclusion of these items from the unemployment insurance wage base. One might argue that items of this nature should be excluded from the income tax wage because payments for illness and injury are in the nature of non-taxable return of capital, and consequently they should be viewed similarly for unemployment insurance wage base purposes. Also, it should be noted that benefit payments may actually be higher (and therefor state expenditures greater) simply because they are subject premium payment. Nonetheless, if a state believes they need to subject some or all of these benefits to unemployment insurance premium assessment, then this provision provides that opportunity by adding back appropriate items to the income tax wage base to derive the unemployment insurance wage base.

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- C. Level Three Wages - Items that may be included in Level One wages (Income Tax Wage Base Inclusions).
1. Reporter's Note: These items which are treated differently by many states as well as many states and the federal government for purposes of the income tax wage base. They are included here for purposes of the Committee's discussion as to whether they should be included specifically as Level One wage inclusions or Level Two wage exclusions for income tax withholding purposes.
 2. To the extent these items can be harmonized (by agreement among the states to include or to exclude) the simpler tax compliance and administration will be.
 3. Possible Compromise to the proposition that all states agree to include or exclude items would be to provide an "add-back" feature whereby individual states can provide a specific option to add-back items to the Level One income
 - a. This may appear cosmetic, however, it would provide a consistent base income among all the states' income tax wage bases AND all the states' employment tax wage bases.
 - b. Consistent filing forms could be developed that make this add-back feature even clearer
 - c. Presumably a consistent form could be developed that could be filed with all agencies involved.
 4. Unless specifically excluded these items will meet the general definition of Level One compensation that is included in the income tax wage base.
 5. A list of these items from the IRS report³⁴ is attached hereto as Exhibit A.
- D. Unemployment Insurance Wage Base
1. As mentioned above, the problem for harmonizing the unemployment insurance wage base with a state's income tax withholding wage base is that the later is intended to establish a process for identifying wages and collecting taxes while the former is intended both to raise revenue and pay benefits.

³⁴ HWC/ITW, *supra*, note 3.

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2. Any attempt to harmonize that has the effect of reducing the unemployment wage base creates two difficulties: it reduces revenues and may reduce or eliminate benefits to any one claimant.³⁵
 - a. For example, if an employee's compensation consists of the two components of (1) cash and (2) meals and lodging excluded from the income tax wage base, if the meals and lodging are excluded from the unemployment wage base, thus conforming it and the income tax wage base, the state will collect less unemployment insurance revenue (unless the cash wages already meet or exceed the maximum subject to unemployment taxes in the state)
 - b. From the benefits side, to the extent meals and lodging are excluded from the wage base an employee's benefits may be reduced or eliminated.
 - (1) If the employee's cash wages already meet or exceed the state's maximum upon which unemployment benefits are calculated, then no reduction in benefits will occur.
 - (2) If the employee's cash wages are less than the maximum upon which benefits are calculated but the shortfall is completely made up by the value of meals or lodging then the employee's benefits will be reduced from the amount that the employee would have

³⁵ "...[T]he components of the THWC have minimal impact on potential benefits accruing to workers. The impact on UI claimant benefits, while high in absolute numbers, when expressed in terms of percentage of annual benefits paid also shows minimal impact. In other words, overall the impact is minimal, but in any given industry, the impact could be greater... Unlike revenues the impact on claimant benefits are not directly linked to the taxable wage base. Rather, they are more closely related to workers' occupations, industries in which they are employed, and their level of earnings." Quoting Philip Corn, HWC project director in telephonic conversations on February 26, 2002.

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received if the value of the meals and lodging had not been excluded from the wage base.

3. The STAWRS group has recommended that significant harmonization of the unemployment insurance tax base and the income tax withholding wage base can be accomplished by adopting the same provisions 14 provisions for the insurance wage base as is being recommended for the withholding tax wage base (*See*, above, at III.³⁶
4. The full detail of the STAWRS group's recommendations for items to be included and excluded are set out at Exhibit B hereto.
5. In addition to the THWC components that group has recommended the following exclusions from the unemployment tax wage base
 - a. Non-cash payments outside the employer's trade or business³⁷
 - b. Corporate director's fees³⁸
 - c. Supplemental employment benefits³⁹

³⁶ “ ...[B]ased on adoption of the overall HWC ... [which includes the provisions for both income tax withholding and unemployment insurance] [t]he ROI for HWC adoption is estimated at 77 percent for employers, and better than 24 percent for states. In other words, employers would see their tax and wage reporting burden significantly reduced. In addition, states can expect to realize over \$24.00 in benefits, or cost savings, for every 100 dollars they invest toward HWC adoption. *Id.*

³⁷ The reporter is not sure what these items might be unless they are intended to cover gifts. Nonetheless, according to the STAWRS group there are a substantial number of states that exclude these amounts either statutorily or administratively.

³⁸ Such payments are more appropriately viewed as fees paid to a non-employee than wages paid to an employee.

³⁹ These are employer paid benefits in addition to state paid unemployment benefits. As such it is a close call as to whether they are or are not wages because, though they clearly derive from the

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- d. Employer paid employee FICA for household domestic employees⁴⁰
- e. Payments for jury service⁴¹
- f. Employment Achievement Awards⁴²

employment relationship, at the time of payment the recipient is not a statutory or common law employee. The STAWRS group believes that in general those states who do not exclude these amounts statutorily do so administratively.

⁴⁰ This provision basically establishes that for purposes of unemployment taxes, like federal income taxes, the wage amount will not be grossed up by the amount of these payments.

⁴¹ Not only are these payments more comparable to fees rather than wages, a juror is not an employee of the state or federal government.

⁴² This harmonizes with the income tax provisions for all jurisdictions currently though, apparently, few states currently exclude this amount from the Unemployment Insurance wage base.

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Exhibit A

STAWRS Report Excerpts On Selected Items
For Inclusion or Exclusion From Income Tax Withholding Wage Base
(With STAWRS working group recommendations)
January 2001 HWC/ITW Report

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DEVELOPING THE HWC/ITW

The HWC project decided that the easiest way to initiate the HWC/ITW was to adopt a procedure and then present a report of findings to the public. Although no single method is entirely satisfactory, the project decided to adopt provisions on the basis of significance and level of harmony. A recommendation that a component be “included” in or “excluded” from the HWC/ITW blueprint, means only that the component is recommended for harmonization in the HWC/ITW. It has no bearing on whether the item is included or excluded from “wages.”

The following is a provision by provision analysis. The Issue Number refers to the number assigned to each component in the project’s analysis.

Fiscal Year – Definition. Issue 216.

“Fiscal year” defined means an accounting period of 12 months ending on the last day of any month other than December.

Recommendation: Include in the HWC/ITW. Although there are only 14 matches and 4 partial matches, the partial matches are actually matches in practice. The states that have partial matches use terms such as taxable year or income year, meaning the accounting year in which a return is filed or income reported. This constitutes a distinction without a difference. Twenty-five states list “no provision” for this issue. However, representatives at the HWC/ITW Working Group meetings (including state representatives and return preparers) indicated that the “no provision” states would follow

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the federal definition. This is also borne out by the fact that so many states generally follow the federal definitions in all respects.

Wages do not include remuneration paid in interstate transportation by nonresident. Issue 256.

Wages do not include remuneration paid for nonresident common carriers. Issue 245.

These two issues were combined as one provision because they appear in substance to be the same issue. That is, a nonresident of a state engaged in a transportation activity that requires passage through another state will not be subject to income tax withholding for remuneration earned during the time of passage. This is not a federal income tax withholding issue.

Recommendation: These issues should not be included in the HWC/ITW. There are 17 matches to this provision and no partial matches. The remainder of the jurisdictions have no provisions on these issues and this means that the no provision states simply honor the position and do not attempt to collect state income tax on such activities. They do this, however, without enacting any specific statutory language. Harmony exists among the states. Since this is not an issue for federal income tax withholding, it serves no useful purpose to include it in the HWC/ITW.

Issues 245 and 256 point to an interesting problem in developing a HWC/ITW. That is, does the recommendation present a good enough argument for not including them in the HWC/ITW? There is harmony among the states that have this provision, but the provision does not exist at the federal level – it is not an issue at the federal level. While it is our recommendation that these issues not be included in the HWC/ITW, it is also stated that state may have this provision without seriously affecting the HWC/ITW. This recommendation affects the next issue, Issue 171, as well.

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The term “employee” does not include a nonresident who performs services in the motion picture industry. Issue 171.

Recommendation: Do not be include in HWC/ITW. There is only 1 match (Colorado) and 1 partial match (Kansas excludes services of an employee who is an extra and who works less than 14 days in a calendar year). This is outside the scope of the HWC/ITW effort.

Wages does not include remuneration for nonresidents engaged in motion picture production/entertainment/athlete events in the state. Issue 246.

Recommendation: Should not be included in HWC/ITW. There are only 6 matches. As indicated above, this is not a federal income tax issue. First, the application is limited. Second, activity by nonresidents is an issue that the states have generally resolved and the inclusion of this issue would not serve the objective of the HWC/ITW. Addressing this issue would not ease the burden of employers or the states.

Trustee Defined. Issue 210.

Fiduciary Defined. Issue 215.

“Trustee” defined is a guardian, trustee, executor, administrator, executrix, receiver, etc.

“Fiduciary” defined is a guardian, trustee, executor, administrator, receiver, conservator, or any person acting in any fiduciary capacity for any person.

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Recommendation: Include the definition of fiduciary in the HWC/ITW. The two issues were combined since they contain many mutual elements and one definition should be able to serve all purposes. Although there are only 21 matches between the two definitions, most states' with no provision probably follow the same definition.

Person Defined. Issue 185.

“Person” defined shall be construed to mean and include an individual, a trust, estate, partnership, association, company, or corporation.

Recommendation: Include in the HWC/ITW. There are 31 matches and 12 no provisions. The “no provision” jurisdictions probably follow the definition. Thus, there is substantial harmony. This definition should be included in the HWC/ITW. It is such an important definition, its absence and exclusion would raise questions in the future.

Individual Defined. Issue 207.

“Individual” defined means as or pertaining to a single human being.

Recommendation: Include in the HWC/ITW. Although 21 jurisdictions, including the federal government, do not have a specific provision defining “individual,” this is an important concept. Most jurisdictions, including the federal, define an individual as a natural person. The 11 partial matches (and 10 matches) generally define individual as a natural person but go on to specifically include aliens or minors, etc.

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Wages do not include remuneration for active service in a month for which the employee is entitled to combat pay as defined in IRC §112. Issue 218.

Recommendation: Include in the HWC/ITW. All jurisdictions are match except one partial match (Wisconsin). It is likely that the state with the partial match follows the other jurisdictions even though its law reads differently.

Wages do not include compensation for national guard/reserve training services. Issue 247.

Recommendation: Do not include in the HWC/ITW. Thirty-six jurisdictions, including Federal, have no provisions. There are three matches and four partial matches. The partial matches exclude up to various dollar amounts. The objectives of the HWC/ITW (lower employer burden and ease to states) would not be served by the inclusion of this issue in the HWC/ITW.

Sick pay that is not considered wages is subject to voluntary withholding. Issue 263.

Recommendation: Include in the HWC/ITW. Several jurisdictions have mandatory withholding on sick pay; in several others, it is not clear if voluntary withholding is permitted or not. The treatment of sick pay is an old issue and generally comes up every year for clarification.

Third party sick pay subject to voluntary withholding. Issue 190.

Recommendation: Include in the HWC/ITW. There are 19 matches and 23 no provisions on this issue. The issue of third party sick pay is an ongoing issue that has caused a great deal of

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confusion among employers and payers of sick pay (including the reporting requirements). It is the type of issue the HWC/ITW was designed to address.

Employee does not include a participant of an Individual Retirement Account (IRA) or Simplified Employee Pension (SEP) plan. Issue 170.

Recommendation: Do not include in the HWC/ITW. Only one jurisdiction has this provision. It is outside the scope of harmonization.

Employee includes a full-time life insurance salesperson. Issue 173.

Recommendation: Do not include in the HWC/ITW. Only 1 jurisdiction has this provision. Note: The term “employee” includes a full time life insurance salesperson for FICA but not FUTA. This issue is outside the scope of harmonization for income tax withholding.

Employee does not include full-time students engaged in seasonal, temporary, or part-time employment. Issue 174.

Recommendation: Do not include in the HWC/ITW. There is only 1 jurisdiction that has this provision. It is outside the scope of harmonization.

Employee means an individual who is a resident or is domiciled in a particular state and who performs services for an employer. Issue 169.

Recommendation: Do not include in the HWC/ITW. There are 13 matches and no partial matches. This indicates that the “no provision” states probably honor the position, but do so without having enacted specific statutory language. The question of the resident or domiciled

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status of workers is something that the states have worked out. It is not an issue for harmonization.

Employer means a person paying wages on behalf of a non-resident alien. Issue 177.

Recommendation: Include in the HWC/ITW. There are 21 matches and no partial matches. The “no provision” states probably follow the federal rule with respect to this issue. This view is supported by the HWC Working Group members. It is also borne out by the fact that so many states generally follow the federal definitions in all respects.

Wages do not include fiduciary distributions to a non-resident alien. Issue 272.

Recommendation: Do not include in the HWC/ITW. There is only 1 match (federal income tax withholding) and 42 no provisions. We do not believe that this is an issue of any importance to the states or employers and it does not relieve employer burden.

Wages do not include remuneration paid for services performed by a non-resident alien. Issue 223.

Recommendation: Include in the HWC/ITW. There are 40 matches, 1 partial match, and only 2 no provisions. This provision falls within an area where harmonization would provide a benefit to employers.

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A non-resident alien is an individual who is neither a citizen of the USA or a resident of the USA or a state. Issue 201.

Recommendation: Include in the HWC/ITW. The definition of a nonresident alien is an essential definition to determine where liability exists for withholding of income tax. A uniform definition would provide a benefit to employers.

Wages do not include payment for services as emergency forest fire fighters. Issue 258.

Recommendation: Do not include in the HWC/ITW. There is only 1 jurisdiction that has adopted this position. This is outside the scope of harmonization.

Wages do not include payment for services performed in a foreign nation that withholds taxes and the wages are excluded from income under IRC 911. Issue 224.

Recommendation: Include in the HWC/ITW. There are 40 matches and 3 partial matches. The treatment of this issue should be uniform and the 3 jurisdictions brought in line with the rest of the jurisdictions.

Residents of a state are subject to withholding regardless of whether wages are earned in or outside the state. Issue 242.

Recommendation: Do not include in HWC/ITW. There are 8 matches and 35 no provisions, including federal. There are no partial matches. The withholding of income tax on wages earned outside the state is an issue that the states have worked out among themselves. No useful purpose would be served in attempting to harmonize the results.

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Wages paid to non-residents for instate services are subject to withholding. Issue 259.

Recommendation: Do not include in the HWC/ITW. Generally, the withholding of state income tax on workers living in one jurisdiction and working in another has been worked out by the states involved. Employers know there are withholding requirements in such cases and harmonization would upset many agreements now in place.

Payments to employee retirement savings are not subject to withholding if the employee will be entitled to a deduction. Issue 251.

Recommendation: Include in the HWC/ITW. There are 41 matches, no partial matches, and two no provisions. This appears to be an issue where all jurisdictions should be in harmony.

Retirement payments for personal services performed by a non-resident performed in the state are not subject to withholding. Issue 257.

Recommendation: Do not include in the HWC/ITW. There is only 1 match and 42 no provisions. Since this issue apparently involves only one jurisdiction, it is not appropriate for harmonization.

Pension and annuities distributions described in IRC §3405 are subject to withholding unless the retired worker elects out. Issue 261.

Recommendation: Include in the HWC/ITW. There are 34 matches, 8 partial matches, and 1 “no match.” This is an issue where harmonization would be beneficial.

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Annuity payments described in IRC §3402 are subject to withholding if an employee elects to have withholding. Issue 262.

Recommendation: Include in the HWC/ITW. There are 35 matches, 7 partial matches, and 1 “no match.” This is an issue where harmonization would be beneficial.

Payments to or from pension/annuity plans described in IRC §3401(a)(12) are not wages. Issue 228.

Recommendation: Include in the HWC/ITW. There are 41 matches and 2 partial matches. This is an issue where all jurisdictions should be in harmony.

Employer means the person for whom an individual performs or performed any service, of whatever nature, as the employee of such person. Issue 175.

Recommendation: Include in the HWC/ITW. There are 40 matches and 3 “no provisions.” This is a basic employment tax concept and should be included. It is such a basic concept that it is likely the 3 “no provision” jurisdictions follow the concept even though it is not contained in any statutory language.

State Defined. Issue 178.

Recommendation: Include in the HWC/ITW. There is 1 match and 12 partial matches. According to representatives of the HWC Working Group, however, the 30 “no provision” jurisdictions follow the basic federal definition.

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United States Defined. Issue 186.

Recommendation: Include in the HWC/ITW. There is 1 match, 4 partial matches, and 38 “no provisions.” According to representatives of the HWC Working Group, however, it is believed that the “no provision” jurisdictions follow the basic federal definition.

Domestic Service Defined. No issue number.

Recommendation: Include in the HWC/ITW. There is nothing in the database dealing with this definition for income tax withholding. IRC regulation 31.3401(a)(3)-1 defines this issue. Since the pay of a domestic is excepted from wages, the elements that constitute domestic service should be defined. The HWC project will need to analyze state law to see if the states define this term.

Wage inclusion – Severance/Dismissal payments. Issue 265.

Recommendation: Include in the HWC/ITW. All jurisdictions are a match.

Wage exclusion – damages received on account of workmen’s compensation. Issues 268 and 267.

Recommendation: Do not include in the HWC/ITW. There are only 2 matches. More importantly, workmen’s compensation payments come from the state; harmonization would not effect the burden of the employer where the injury occurred. Therefore, this type of payment is outside the scope of the HWC/ITW.

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Wage exclusion – scholarships/fellowships. Issue 234.

Recommendation: Include in the HWC/ITW. There are 40 matches on this issue. Only 3 jurisdictions are not in harmony.

Wage exclusion – employee achievement awards. Issue 235.

Recommendation: Include in the HWC/ITW. There are 41 matches and 2 no provisions.

Wage inclusion – employer pays employee FICA or UI taxes. No issue number.

Recommendation: Include in the HWC/ITW. This provision concerns wages for federal wage purposes and, as such, it would apply to most jurisdictions. It is the type of benefit many employers provide their employees, especially small employers. Therefore, it should be part of the HWC/ITW.

Wage exclusion – payments to a person who is disabled. Issue 253.

Recommendation: Include in the HWC/ITW. This should be harmonized since this type of payment is not uncommon.

Wage inclusion – supplemental unemployment benefits. Issue 264.

Recommendation: Include in the HWC/ITW. There are 40 matches on this issue.

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Direct Sellers and Real Estate Agents (IRC §3508). No issue number.

Recommendation: Do not include in the HWC/ITW. However, this provision, like Issues 256, 245, and 171, can be adopted by states without affecting the HWC/ITW. IRC Section 3508 refers to the Internal Revenue Code and involves the treatment of individuals as employees or as self-employed persons. Although there are several states that follow the federal provision, any attempt to harmonize this issue would be disruptive to the entire HWC/ITW.

Wage exception – share of the catch fishing. Issue 231.

Recommendation: Include in the HWC/ITW. There are 40 matches on this issue, 1 partial match, and 3 no provisions, one of which is from a non-fishing jurisdiction.

Wage exception – age based services. Issue 260.

Recommendation: Do not include in the HWC/ITW. There is only 1 match and no partial matches on this issue.

Included/Excluded wage rule. No issue number.

Recommendation: Include in the HWC/ITW. This is an important employment tax concept and as such should be part of the HWC/ITW.

Agricultural Activities. Issues 219, 181, 206, 212, 195, 189, 203, 199, 196, 184, 209, 191, and 200.

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Recommendation: Do not include in the HWC/ITW. Agricultural activities are a specialized area where separate tax returns, deposits, and rules are followed. Attempts to harmonize agricultural labor provisions would not produce a significant reduction in employer burden.

Wage exception – pay for service not in a trade or business. Issues 221, 238.

Recommendation: Include in the HWC/ITW. There are 40 matches for both issue numbers. This is not an issue that would bring much relief to employers since the pay must be for services not in a trade or business. Nevertheless, because there are so many matches, it is recommended for inclusion.

Treatment of Corporation Officer. Issue 167.

Recommendation: Include in the HWC/ITW. There are 39 matches and 4 no provisions. Because every corporation must have at least one officer, this issue is appropriate for harmonization – especially with so many matches.

Wage exception – pay for newspaper delivery. Issues 226, 227.

Recommendation: Include in the HWC/ITW. There are 42 matches and 1 no provision for both issue numbers. This falls into the category for harmonization.

Wage exception – pay for domestic service. Issue 220.

Recommendation: Include in the HWC/ITW. There are 40 matches, 1 partial match, and 2 no matches. This is not an area where harmonization will have any impact on commercial

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business. However, it is an area where there are many employers. In principle, it should be harmonized.

Employee leasing company as an employer. Issue 183.

Recommendation: Do not include in the HWC/ITW. There are 40 no provisions on this issue.

Wage exception pay for child support/foster care. Issue 271.

Recommendation: Do not include in the HWC/ITW. There is only 1 match and 1 partial match on this issue. It falls outside the area where harmonization should be considered. Furthermore, it has no impact on the commercial business sector.

Employee includes an officer or elected official. Issue 166.

Recommendation: Include in the HWC/ITW. There are 39 matches, 3 no provisions, and 1 no match. It is likely that the 3 no provisions follow the subject definition. Therefore, with a possible 42 matches, this provision should be in the HWC/ITW.

Wage exception – Fees paid to a public official. Issue 217.

Recommendation: Include in the HWC/ITW. All jurisdictions match.

Wage exception – wages do not include pay for service for a foreign government or international organization. Issue 222.

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Recommendation: Include in the HWC/ITW. There are 42 matches and 1 partial match.

This meets the criteria for inclusion in the HWC/ITW.

Vehicle Fringe Benefits – employer may elect not to withhold income tax but is required to issue

W-2. Issues 180, 188, and 194.

Recommendation: Include in the HWC/ITW. Although there are only 4 matches and 39 no provisions, the Working Group believes that there are many jurisdictions that follow the federal rules. (Note: In the event that the 39 no matches involve jurisdictions that do not follow the federal rule, then the recommendation is not to include this provision in the HWC/ITW.)

Wage exception – pay of a clergy or minister. Issue 225.

Recommendation: Include in the HWC/ITW. All jurisdictions are a match.

Employee Definition – clergy/minister may elect to be considered an employee. Issue 172.

Recommendation: Do not include in the HWC/ITW. There is only 1 match. This is outside the scope of harmonization.

Resident Alien Defined. Issue 197.

Recommendation: Include in the HWC/ITW. Although there are only 12 matches and 2 partial matches, the 29 “no provision” jurisdictions probably follow the federal definition.

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Cash Defined. Issue 204.

Recommendation: Do not include in the HWC/ITW. There are only 2 matches for this issue; all other jurisdictions are no provision. This issue does not meet the criteria for harmonization.

Corporation Defined. Issue 213.

Recommendation: Include in the HWC/ITW. There appear to be at least 18 matches in substance, although not all the language is the same. However, this is an important definition and there are sufficient matches to justify inclusion in the HWC/ITW.

Domestic Corporation or Partnership. Issue 192.

Recommendation: Include in the HWC/ITW. Although there are only 8 matches and 11 partial matches, we believe that the 26 no provisions nevertheless follow the federal definition. Until demonstrated otherwise, this issue falls within the criteria for harmonization.

Wage exclusion – Social Security and Railroad Retirement benefits. Issue 270.

Recommendation: Do not include in the HWC/ITW. This issue does not apply in an employment context. The benefits are paid by a government agency and only non-resident aliens would be subject to withholding. The inclusion of this issue in the HWC/ITW would not contribute to burden reduction for employers.

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Wage exception – non-cash payments to a retail salesperson. Issue 254.

Recommendation: Include in the HWC/ITW. All jurisdictions match on this issue.

Wage exception – strike benefits paid by union. Issue 255.

Recommendation: Do not include in the HWC/ITW. There are only 2 matches. This is not the type of issue where the harmonization effort is likely to reduce employer burden. The issue does not occur with enough frequency to justify its inclusion in the HWC/ITW.

Wage exception – deceased person’s earnings. Issue 241.

Recommendation: Do not include in the HWC/ITW. There is only 1 match on this issue.

Wage exception – lottery winnings. Issue 266.

Recommendation: Do not include in the HWC/ITW. This issue does not occur in an employment relationship and, therefore, is outside the scope of the HWC/ITW.

Treatment of non-qualified deferred compensation plans. No issue number.

Recommendation: Include in the HWC/ITW. This is a fairly common issue among employers and as such, should be included for harmonization.

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Employer Defined. Issue 176.

“Employer” defined means the person having control of the payment of wages.

Recommendation: Include in the HWC/ITW. There are 35 matches and 3 partial matches for this issue. More importantly, it is a concept that is basic to the income tax withholding provisions. It must be included in the HWC/ITW.

Employee – Common-law employee defined. Issue 168.

Recommendation: Do not include in the HWC/ITW. Although for income tax purposes almost all jurisdictions match and have adopted the common law definition of employee, a decision was made at the outset of the HWC/ITW project that the definition of employee would be outside the scope of the project. This issue is too controversial.

Wage exception – pay for service in the Peace Corps. Issue 239.

Recommendation: Include in the HWC/ITW. There are 41 matches and 2 “no provision” jurisdictions. It is likely that the two “no provision” jurisdictions follow the federal provision. Therefore, this is a candidate for harmonization.

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Wage exception – Unemployment Compensation. Issue 269.

Recommendation: Do not include in the HWC/ITW. There are 3 matches. The remaining jurisdictions are no provision. However, and more importantly, unemployment compensation is a payment by the state to the unemployed person and does not occur from a payment by the employer to the unemployed. Therefore, harmonization of this issue, would not be likely to reduce employer burden.

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Exhibit B

Selected Items For
Inclusion or Exclusion From Unemployment Insurance Tax Wage Base

Prepared with technical assistance from the STAWRS Project and Mr. Philip Corn

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What follows is a list of items being considered presently by the Harmonized Wage Code Project. A final report on their conclusions as to whether these items should be included or excluded from the unemployment tax wage base is forthcoming in the next several months. The listing here does not suggest the endorsement of any particular view as to inclusion or exclusion. The listing is simply a summary of the Project's data base located at ?????? and some preliminary thoughts as to their significance.

It should be kept in mind that the following list deals with the unemployment insurance wage base. Many, if not most, of the items listed as wage exclusions (other than those at I.) are and will continue to be subject to income tax withholding, and items listed as exclusions from the definition of employment are, and will continue to be, a part of the gross income wage base though not the income tax withholding wage base.

Finally, please note when reviewing the data base that some items listed here as wage exemptions may be listed by some states as employment exemptions. In either event, the amount of payments will not be considered by those states as part of the unemployment wage base.

I. Provisions describing exclusions from the definitions of "wages" and "employment" for purposes of unemployment insurance tax assessment and benefit determination (i.e. - not considered a component of the unemployment wage base)

A. Wage Items also excluded from Level One wages.

1. Meals and Lodging
2. Group-Term Life Insurance
3. Dependent Child Care

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4. Employee Business Expense Reimbursement
5. Employee Achievement Awards
6. Health Insurance
7. Cafeteria Plans
8. Moving Expenses
9. Fringe Benefits
10. Death Benefits
11. Fees for jury duty
12. Payments made to or from pension and annuity plans described in IRC §3306(b)(5)
13. Sick pay to the extent received under a workman's compensation law but not in excess thereof
14. Sick pay after six months is excluded from wages

B. Additional Wage Items excluded from the unemployment insurance wage base.

1. Supplemental unemployment benefits
2. Payments for retirement for disability, other than payments to which the employee is entitled in compensation for work actually performed (similar to income in respect of a decedent.)
3. Employer payment without deduction of employee FICA or employee UI taxes for wages paid for domestic service in a private home
4. Wages do not include non-cash payments outside the employer's trade or business⁴³

⁴³ Most of the issues presented in this exhibit are listed without comment. This one, however, the Reporter found particularly confusing. The Treasury defines these services as, essentially, work done for a non-corporate employer at or around the employer's home (*See*, IRC Reg. §31.3121(a)(7)-1). Also, there is some impact on farm labor. Issues peculiar to farm labor have not been addressed by this report to the committee.

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C. Additional items of remuneration excluded from the Unemployment Insurance wage base because payments are made to one who is not an employee. It should be noted that most (but not all) state statutes already provide for most (but not all) of the exclusions listed below or have no provisions (where for the moment we can assume that they are excluded by administrative acquiescence). The most significant "holdout" is FICA which includes in the wage base many of the items listed below. For exclusion purposes the term "employment" does not include

1. Service to the Court as a juror
2. Fees paid to corporate directors for their services as directors
3. Service by an individual under the age of 18 in the delivery of newspapers
4. Service performed by an individual in the exercise of his or her duties as a member of the State National Guard or Air National Guard
5. Service in the employ of a governmental entity if such service is performed by an individual serving on a temporary basis in case of fire, storm, snow, earthquake, flood, or similar emergency
6. Services performed by aliens under F, J, M, or Q visas
7. Service as a duly ordained, commissioned, or licensed minister of a church in the exercise of his or her ministry or by a member of a religious order in the exercise of duties required by such order
8. Services in the employ of a church or convention of churches; service in the employ of an organization operated primarily for religious purposes which is operated, supervised, controlled, or principally supported by a church or convention of churches.
9. Service performed in the employ of a foreign government, including service as a consular, other officer, employee, or a non-diplomatic representative
10. Service performed in the employ of an international organization

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11. Service performed in the employ of an instrumentality wholly-owned by a foreign government if the service is of a character similar to that performed in foreign countries by employees of the United States Government or of an instrumentality thereof and if the Secretary of State shall certify to the Secretary of Treasury that the foreign government grants an equivalent exemption
12. Service in the employ of a governmental entity if such service is performed by an individual in the exercise of his or her duties as an elected official
13. Service in the employ of a governmental entity if such service is performed by an individual in the exercise of his or her duties in a position which is designated as (1) a major policy making, or (2) advisory position, or (3) a policy making position which does not require more than eight hours per week
14. Service by an individual in the exercise of his or her duties as a member of a legislative body or judiciary
15. Domestic service performed in a private home, local college club, or local chapter of a college fraternity or sorority unless performed for a person who paid cash remuneration of \$1,000 or more in any calendar quarter in the current calendar year or preceding calendar year to individuals employed in such domestic service
16. Service performed in the employ of the United States Government or an instrumentality of the United States which is wholly or partially owned by the United States, or exempt from the tax applied to an employer by virtue of a law which specifically grants an exemption
17. Services performed by an individual as an employee or employee representative as defined in the Railroad Unemployment Insurance Act
18. Services by an inmate of a custodial or penal institution
19. Services performed as an insurance agent or solicitor if compensated solely by way of commissions
20. Services as part of an unemployment work-relief or work-training program financed in whole or in part by governmental assistance
21. Services in a facility conducted for the purpose of carrying out a program of providing work for individuals who cannot be readily absorbed in the labor market

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22. Services performed by individuals employed by a State Department or recipient government entity through a summer youth employment program
 23. Services performed by a student in the employ of a school, college, or university if such service is performed by a student who is enrolled and regularly attending classes at such school
 24. Services as a student nurse in the employ of a hospital or nurses' training school
 25. Service in a facility rehabilitating individuals whose earning capacity is impaired by age, injury, or physical or mental deficiency - Issue 415.
- D. Provisions that were found in four or fewer jurisdictions. These terms have been dubbed by the STAWRS team as "outliers." There are 95 such items listed on the STAWRS data base. They include items to be included or excluded from wages or employment. In any event the Committee needs to decide whether these issues should be addressed directly, indirectly or not at all.

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Exhibit C

CHART OF STATE COMPLIANCE DATES

(Prepared by Philip Corn)

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STATE WITHHOLDING TAXES

STATE UI TAXES

	EFT Rules	Income Tax Payment Dates	Income Tax	UI Tax Filing/Payment
	\$ Threshold	Dollar Limits	Report	Dates
			Filing Dates	
AL	\$25,000 or more	M: Due by 15 th of Feb, Mar, May, June, Aug, Sept, Nov, and Dec if \$1000 or more Q: LDNM if <\$1000 No income tax on individuals	Remit with Report for Q and M	Q - LDNM
AK		No income tax on individuals		Q - LDNM
AZ	\$20,000 or more	Semi-weekly: If >\$1500 for preceding 4 Qs M: Follows Federal Law if avg. > \$1500/Q Q: LDNM if avg. for prior 4Qs <\$1500	Remit with Report	Q - LDNM
AR	\$20,000 or more	M: By 15 th of NM if \$200 or more Annual: By 1/31 if <\$200/yr	Remit with Report	Q - LDNM
CA	\$20,000	Semi-weekly: If req'd by federal rules and >\$400 M: If req'd by federal rules and >\$400; due by 15 th of NM; also employers if accumulated withholding during 1 or more months of a Q is \$350 or more Q: All others that have accumulated less than \$350. LDNM	Remit with Report. Q reports are req'd; others file a coupon	Q - LDNM
CO	\$50,000 or more	M: by 15 th of NM if withholding during lookback period was \$7000 but not more than \$50,000 W: If more than \$50,000 Q: By LDNM if <\$7,000 Follows federal rules	Remit with Report (M and Q) W must use EFT	Q - LDNM
CT	\$100,000	Follows federal rules	Remit with Report	Q - LDNM
DE	Federal rule	8 th Monthly: 3 rd working day after the 3 rd , 7 th , 11 th , 15 th , 19 th , 22 nd , 25 th and LDM if >\$20,000 M: 15 th of NM if >\$3,600 but has not exceeded \$20,000 during look back period Q: LDNM if during lookback does not exceed \$3600	Remit with Report in every case	Q - LDNM
DC	No EFT rule	M: By 20 th of NM if amount >\$50/M Annual: By 20 th of Jan if \$50 or less/month	Remit with Report	Q - LDNM
FL		No personal income tax		Q - LDNM
GA	\$10,000	M: 15 th of NM if >\$200/M Q: LDNM if \$200 or less/M	M: remit with payment voucher	Q - LDNM
HI	\$100,000	A: By 1/31 if \$800 or less/year M: by 15 th of NM if >\$1000; by 10 th if >\$100,000 Q: LDNM if \$1000 or less	Q: remit with Report Remit with Report	Q - LDNM
ID	\$100,000	Split Monthly: If \$60,000 or more a year or an avg. of \$5000 or more a month must remit 5 days after	Split Monthly and M remit with	Q - LDNM

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		end of withholding period. Period begins on 16 th of each month and ends on 15 th of next month	voucher. Q and A remit with report	
		M: By 20 th of NM if \$500 or more		
		Q: LDNM if <\$500/Q		
		A: By LD of Feb		
IL	Avg A liability of \$200,000 or Avg Q liability of \$50,000	Q/M: By 3 rd banking day after the 7 th , 15 th , 22 nd and LDM if >\$1000/Q	Q/M: Remit with Report	Q - LDNM
		M: By 15 th of Feb, March, May, June, Aug, Sept, Nov and Dec if >\$500 but <\$1000	M: Remit with Report	
		Q: By LDNM. If <\$500/Q, may pay quarterly	Q: remit with Report	
		A: By 1/31 if <\$500/yr	A: Remit with Report	
IN	\$10,000	M: By 30 th of NM or 20 th of NM if >\$1000/M or avg >\$1000/M	Remit with Report in all cases, unless EFT is req'd.	Q - LDNM
		Q: By LDNM if did not exceed \$75/M in preceding yr. (By 20 th of NM if electronic)		
		Semi-Annual: By 1/31/ and 7/31 if did not exceed \$25/M in preceding yr		
IA	SM: \$8,000 M: \$16,000	A: by 1/31 if did not exceed \$10/M in preceding yr. SM: By 25 th of current month and 10 th of NM if amt withheld >\$8000 in a semimonthly period	Q: Remit with Report SM: EFT	Q - LDNM
		M: By 15 th of Feb, March, May, June, Aug, Sept, Nov and Dec if >\$50/M		
KS	\$100,000	Q: By LDNM if \$50 or more Quarterly-Monthly: By 3 rd banking day after 7 th , 15 th , 21 st and LDM if >\$100,000/yr	Remit with Report in all cases	Q - LDNM
		Semi-monthly: By 25 th of current month and 10 th of NM if >\$8,000 but does not exceed \$100,000/yr		
		M: By 15 th of NM if >\$1,200 but <\$8,000		
		Q: By 25 th of NM if >\$200 but <\$1,200		
KY	\$24,000	A: By 1/25 if does not exceed \$200/yr Q: LDNM if amt during lookback period was between \$400 and \$2,000.	Remit with Report in all cases	Q - LDNM
		M: By 15 th of next amt if between \$2,000 and \$50,000 (Dec return due 1/31)		
		Twice Monthly: By 10 th and 25 th if amt was \$50,000 or more. For January, amt due by 2/10. Amts between 12/16 and 12/31 due by 1/31		
LA	\$20,000	A: By 1/31 if amt did not exceed \$400 Semi-monthly: By last day of CM and 15 th of NM if at least \$2,000/M	Remit with Report in all cases.	Q - LDNM
		M: LDNM if at least \$500 but <\$2,000/M		
		Q: LDNM if <\$500/M		
		A: By 2/28 if \$100/yr or less for preceding yr and projected current year		

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ME	\$200,000	SW: Federal rule followed	Remit with Q Report	Q - LDNM
MD	\$20,000	Q: LDNM if less than \$2400 EFT: If >\$20,000 or more, immediately using EFT M: By 15 th of Feb, Mar, May, June, Aug, Sept, Nov and Dec if amt in any quarter is at least \$700 Q: LDNM if <\$700	SW: Voucher Remit with Report M, Q, and A	Q - LDNM
MA	\$250,000	A: By 1/31 if \$250 or less QM: If >\$25,000/yr, by 3 rd business day after the 7 th , 15 th , 22 nd and LDM M: By 15 th of Feb, Mar, May, June, Aug, Sept, Nov, and Dec; by 1/31, 4/30, 7/31/ and 10/31 if \$1201 to \$25,000/yr Q: LDNM if \$ 101 to \$ 1,200/yr	Remit with Report in all cases	Q - LDNM
MI	Voluntary	A: By 1/31 if \$100 or less SW: If >\$40,000/M follow federal rule M: If combined tax liability >\$3600, but withholding liability is <\$40,000, due by 15 th of NM Q: If combined tax liability >\$750 but <\$36600, due by 15 th of Jan, Apr, July and Oct. A: If combined sales, use and income tax is <\$750/yr, due 2/28	Remit with Report	Q - LDNM
MN	\$50,000	Twice-weekly: If more than \$1500 in Minnesota taxes in prior Q and required to deposit federal taxes twice weekly M: If >\$1500 in Minnesota taxes in prior Q and reqd to deposit federal taxes monthly, due by 15 th of NM Q: By LD of April, July and Oct	TW and M: Coupons Q: Remit with Report 4 th Q is included with A reconciliation	Q - LDNM
MS	No program	A: By 2/28 if \$500 or less M: By 15 th of NM if >\$300/M	Remit with Report	Q - LDNM
MO	Voluntary	Q: By 15 th of Jan, Apr, July, and Oct is \$300 or less QM: By 3 rd banking day after 7 th , 15 th , 22 nd , and LDM if amt withheld in each of at least 2 months during prior 12 months is \$9000 or more M: By 15 th of Feb, Mar, May, Jun, Aug, Sept, Nov and Dec and by LD of Jan, April, Jul and Oct if amt in each of at least two months during the prior 12 months is \$500 or more and liability does not meet the QM depositor threshold. Q: LDNM if \$20 or more during at least one of the preceding 4 Qs and not required to file monthly	Remit with Report	Q - LDNM
MT	\$500,000	A: By 1/31 if <\$20 a quarter during pri or 4 Qs Accelerated: Same as federal due date, generally semi- weekly, if during lookback period >\$12000	Ac: Coupon M: Coupon	Q - LDNM

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		M: By 15 th of NM if during lookback is between \$1200 and \$11,999	A: coupon Ac filers file Q reconciliation by LDNM M and A file yrly recon by 2/28	
		A: By 2/28 if during lookback is < \$1200		
NE	\$100,000	M: By 15 th of Feb, Mar, May, Jun, Aug, Sep, Nov, and Dec if >\$500 in 1 st or 2 nd month of a quarter	Remit with Report	Q - LDNM
NV		Q: All employers by LDNM if \$500 or less. No personal income tax		Q - LDNM
NH		No personal income tax		Q - LDNM
NJ	\$20,000	W: By Weds of NW if prior year liability of \$20,000 or more M: by 15 th of NM if >\$500 Q: LDNM if <\$500 A: by 2/28 if wages paid for previous year were insufficient to require withholding	Remit with Report W: EFT M, Q, and A: with Report	Q - 30th of NM
NM	\$25,000	M: By 25 th of NM	Remit with Report	Q - LDNM
NY	\$400,000	Q or Semi-A: By 25 th of NM if <\$200 Ac: By 5 th business day if at least \$700, if amt withheld is less than \$15,000 for the yr preceding the previous yr. By the 3 rd business day if at least \$700 and if amt withheld is \$ 15,000 or more in yr preceding previous yr	Remit with Report	Q - LDNM
NC	\$240,000	Q: LDNM if <\$700 SW: If avg \$2,000 a month, due on same schedule as federal income tax deposits M: By 15 th of NM if avg \$500 but <\$2,000/M (Dec return due 1/31) Q: LDNM if avg <\$500/M	Remit with Report	Q - LDNM
ND	Program pending	Q: LDNM A: By 1/31 if amount withheld during prior yr was less than \$250	Remit with Report	Q - LDNM
OH	\$300,000	PW: Within 3 banking days following end of partial- weekly period if amt during prior 12 month period was \$84,000 or more. (PW periods consist of a consecutive Sat, Sun, Mon and Tues; or a consecutive Wed, Thur, and Fri M: By 15 th of NM if amt during prior 12 month period ending 6/30 >\$2,000 but <\$84,000 Q: LDNM if during 12 month period ending 6/30 of preceding calendar year <\$2,000	Remit with Report	Q - LDNM
OK	Voluntary	SW: Federal SW deposit schedule if \$10,000 or	Remit with report	Q - LDNM

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		more/M		
		M: By 15 th of NM if \$500 or more/Q		
		Q: By 15 th of NM if <\$500		
OR	No program	\$100,000 or more: Follows federal law: next banking day	Remit with coupon	Q - LDNM
		SW: By following Wed for a Wed, Thu or Fri payday; by following Fri for a Sat, Sun, Mon or Tues payday	Remit with coupon	
		M: Follows federal law	Remit with coupon	
		Q: LDNM	Report	
PA	\$20,000	SM: Within 3 banking days of the 15 th of the current M and last day of the M if amt is \$1,000 or more/Q	Remit with Report	Q - LDNM
		M: By 15 th of NM if amt <\$300 but less than \$1,000/Q		
		Return for Dec is due 1/31		
		Q: LDNM if amt <\$300		
RI	\$10,000	D: On next banking day if \$24,000 or more	Remit with Report	Q - LDNM
		QM: Within 3 banking days of the 7 th , 15 th , 22 nd , and last day of M if \$600 but less than \$24,000/M		
		M: By 20 th of Feb, Mar, May, Jun, Aug, Sept, Nov, and Dec; and by LDNM if \$50 but less than \$600/M		
		Q: LDNM if <\$50/M		
		A: By 1/31 if wages paid insufficient to require withholding		
SC	\$20,000	SW: Follows federal rule	Remit with coupon	Q - LDNM
		M: Follows federal rule	Q returns req'd by	
		Q: Follows federal rule	LDNM	
SD		No personal income tax		Q - LDNM
TN		No personal income tax		Q - LDNM
TX		No personal income tax		Q - LDNM
UT	Voluntary	M: LD of next M if \$1,000 or more/M	Remit with report	Q - LDNM
		Q: LDNM if <\$1,000/M		
VT	\$36,000	SW: If >\$9,000/Q, deposit on federal schedule of SW deposits (Wed if payday on prior Wed, Thur, or Fri; deposit on Fri if payday on prior Sat, Sun, Mon or Tues.	SW: EFT M and Q: file with report	Q - LDNM
		M: By 25 th of NM and by 2/23 if amt >\$2,500 but <\$9,000/Q		
		Q: By 25 th of NM if <\$2,500		
VA	\$20,000	SW: Within 3 banking days after a semi-weekly period if avg >\$500	M and Q: remit with report	Q - LDNM
		M: LDNM for Mar, Jun, Sep, and Dec and by 20 th of NM for all other months if avg is between \$100 and \$1,000	SW: coupon	

Uniform Withholding And Unemployment Tax Wage Base Act
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WA		Q: By LDNM if <\$100/M		
WV	No program	No personal income tax		Q - LDNM
		M: By 20 th of NM (Dec due 1/31) if amt >\$250/M. By	Remit with Report	Q - LDNM
		6/23 if amt for preceding yr avg >\$100,000/M		
WI	\$10,000	Q: LDNM if <\$250.		
		A: By 1/31 if <\$150/Q and >\$600/yr		
		SM: LD of current month and by the 15 th of NM if amt	Remit or deposit with	Q - LDNM
		>\$5,000/Q	Report	
		M: LDNM if >\$300/Q		
		Q: LDNM all other employers unless otherwise		
		notified		
WY		A: By 1/31		
		No personal income tax		Q - LDNM

Federal Income Tax Withholding and FICA

FUTA

Income Tax and FICA Payment		Income Tax and FICA Filing Dates/	FUTA Tax
Dates – Timely Receipt –		Timely Receipt	Filing/Payment
\$ limits			Dates
EFT if	Next Day Deposit: If \$100,000 or more	Next Day/SW/M: Deposit with Coupons	Q: Deposit with
\$200,000 or more	SW: If >\$100,000	Q Report (941): LDNM	coupons unless
	M: If \$50,000 or less Q: If <\$2,500		\$100 or less in
			which case can be
			paid with 940.
			Annual Report (940) is
			required

Key:

- <: Less than
- >: Greater than
- A: Annual
- AC: Accelerated
- Amt: Amount
- D: Daily
- LDM: Last day of the current month

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LDNM: Last day of the next month

M: Month or Monthly

PW: Partial-weekly

Q: Quarterly

Recon: Reconciliation

Req'd: Required

SM: Semi-monthly

SW: Semi-weekly

W: Weekly