

**The Harmonized Wage Code for Income Tax
Withholding
(HWC/ITW)**

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EXECUTIVE SUMMARY

The Harmonized Wage Code (HWC) project seeks to reduce employer burden and promote government efficiency by developing simplified employment tax requirements to replace the multitude of complex laws employers face today. The project arises from the recognition and consensus of private employers, trade organizations, payroll service providers, and federal and state agencies, that tax and wage reporting laws create a significant burden for employers that could be reduced by uniform provisions.

The Harmonized Wage Code for Income Tax Withholding (HWC/ITW) Report outlines recommendations¹ by the HWC project to blend the federal and state employment income tax withholding laws into one harmonized code. The HWC/ITW Report is the second in a series of reports that also includes the Targeted Harmonized Wage Code (THWC) Report, and the soon to be released Harmonized Wage Code for Unemployment Insurance (HWC/UI) Report. The first report of the series, the THWC Report, was originally issued in September 1999 and updated in August 2000. The THWC Report is viewable and may be downloaded from the Simplified Tax and Wage Reporting System's (STAWRS) Web site: www.biztax.gov. The third report, the HWC/UI² Report, will focus on the state unemployment insurance tax laws, the Federal Insurance Contributions Act (FICA), and the Federal Unemployment Tax Act (FUTA); and will be published in the spring of 2001. The HWC project decided that the HWC/UI Report should not incorporate a harmonized wage code for filing and payment requirements.³ Harmonizing the filing and payment requirements will be addressed in a separate report.

The HWC/ITW Report contains recommendations by the HWC project for harmonization of income tax withholding laws (laws that affect revenue) at the federal and state levels. The Report includes background information on the HWC project, a description of the project's methodology, and the resulting recommendations in the form of a blueprint for legislation; hereafter referred to as a blueprint. To arrive at those recommendations, the project conducted an in-depth analysis of the 43 income tax withholding laws⁴ (the federal ITW laws and 42 state ITW laws), and their components. Each state law and its related components were compared to the federal income tax withholding laws and components, and to those of other states. When compared to federal withholding laws, most states already have substantially identical laws for their state income tax withholding, however, the components vary.⁵ The key to harmonization is achieving substantial consistency across state and federal components. Those provisions in state or federal law that are not part of the HWC/ITW remain unchanged.

The HWC project realizes that there may be difficulty in gaining consistency across components among all jurisdictions. For example, a component may have a constituency that does not wish to see it harmonized, being excluded from or included in the HWC/ITW, as a result. In addition, many components are important for administrative or procedural reasons. Despite such impediments, the HWC project included these components in the blueprint in order to provide a consistent foundation for harmonization.

The HWC/ITW is offered for adoption by all jurisdictions.⁶ It is not the intention of the HWC project to create a massive employment tax code to be mandated by the federal government to the states. Instead, the project has presented its findings for the HWC/ITW in the form of a blueprint, to be considered by state legislatures and adopted by each jurisdiction.⁷

1. INTRODUCTION TO THE HARMONIZED WAGE CODE PROJECT

1.1 Background

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 different times, on different forms, and on assorted media. The reporting burden is compounded when employers have workers in more than one state, because many states have different legal or procedural requirements.

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 that 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. Therefore, a solution will require legislative changes.

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

1.2 Purpose

The HWC project is designed to conform with and support the Internal Revenue Service's (IRS) strategic objectives of revolutionizing how taxpayers transact and communicate with the IRS. An important aspect of aligning the HWC goals with those of the IRS is the effort to simplify and clarify the tax laws employers must follow, thereby strengthening the federal-state partnership in tax code reform. The Harmonized Wage Code for Income Tax Withholding (HWC/ITW) Report clarifies the revenue provisions of the tax laws employers must follow.

The HWC/ITW Report presents for consideration recommendations by the HWC project for harmonization of the income tax withholding laws at the federal and state levels. The recommendations are presented in the form of a blueprint for legislation; hereafter referred to as a blueprint, and are meant for consideration by state legislatures and the federal government. Adoption of an HWC/ITW would reduce the tax and wage reporting burden on employers by harmonizing the employment tax laws related to revenue.

1.3 The HWC Project

The HWC project supports the simplified requirements initiative of the Simplified Tax and Wage Reporting System (STAWRS) Program, and focuses on reducing the tax- and wage-related burden on employers by harmonizing the federal and state employment tax laws. These include two revenue provisions: the federal and state income tax withholding (ITW), and three social welfare provisions: FICA, FUTA, and SUI.

The HWC project is one of the most comprehensive efforts to simplify the tax code ever attempted. Developing a harmonized body of requirements would dramatically simplify wage and unemployment insurance codes, including related filing and payment dates. Harmonization is a monumental undertaking that has never been attempted on a nationwide basis.⁸ While the HWC project has the greatest overall burden reduction potential of the STAWRS projects, it is also the most problematic. Harmonization is achievable only through legislative and administrative changes, which are lengthy and much contested processes.⁹

The HWC project solicited feedback from states on the harmonization concept. On the basis of that feedback and the complexity of employment tax laws, the HWC project developed an incremental approach to harmonization. The first task was to develop a Targeted Harmonized Wage Code (THWC), which addresses a subset of the 96 employment tax laws. The THWC addresses the fourteen components to which small employers are most often subject. The fourteen components incorporated in the THWC are also included in the HWC/ITW, however they are not specifically addressed in the HWC/ITW Report. For information on the THWC components, please consult the THWC Report. The second and third tasks are development of an HWC for income tax withholding (HWC/ITW) and an HWC for unemployment insurance (HWC/UI), including FICA, respectively. The revenue (ITW) components have a different purpose than the unemployment insurance (UI) components. Withholding of income tax is a means of helping taxpayers meet their income tax obligations by having the money paid throughout the year, rather than in one lump sum at tax-paying time. Income tax withholding also provides cash to federal and state governments on a regular basis, reducing borrowing costs for the governments. The UI provisions essentially provide funding for the payment of insurance premiums and specific benefits, e.g., social security pensions and unemployment compensation. Because ITW and UI provisions serve different purposes, the difficulty in developing one harmonized wage code is monumental. As a result, the project divided the HWC into two different codes; and proposes two distinct blueprints.

1.4 Benefits of an HWC

Harmonizing the employment tax laws provides substantial benefits to employers. Benefits include simplified record keeping for employers and easier interpretation of laws through uniform tax- and wage-related definitions (i.e., employer, wages, and employment).¹⁰ Other benefits include fewer and simpler regulations, instructions, procedures, and forms that require less data. These benefits result in significant burden reduction for employers.

Increased government efficiency should arise from the same factors that reduce employer burden. Fewer forms will have to be processed, especially if federal and state forms are combined; and concise provisions and regulations will result in quicker and more accurate interpretation.

The HWC will not only have a major impact on reducing employer burden, but will also affect software development, third-party filers, and accounting/payroll providers. Currently, some accounting firms and payroll providers must maintain software applications that support employment and unemployment insurance tax laws in 50 states, the District of Columbia, and the federal government. Keeping software current for such a large and diverse customer base is costly. Simplified requirements should reduce software development and maintenance costs, thereby enabling vendors to focus resources on developing new applications and linking payroll/accounting packages to value-added networks (VANs). This new environment would make satisfying an employer's filing and payment requirements from payroll and accounting applications transparent to the employer.

1.5 The HWC Project Team

The HWC project team includes the Project Manager, Philip M. Corn, detailed from the IRS where he is Special Assistant for Employment Taxes in the Office of the Associate Chief Counsel, Tax Exempts and Government Entities; and Ronald Moore, consultant to the HWC project, formerly a Technical Assistant (Employment Taxes) in that office. The HWC project is one of the projects under the STAWRS Program, whose Executive-in-Charge is Midori Morgan-Gaide. For additional information on the STAWRS program, please visit STAWRS Web site at www.biztax.gov.

1.6 The HWC Working Group

The HWC is an on-going project that involves representatives from state government (revenue and unemployment insurance agencies), employers, trade associations, and federal agencies. The project sought involvement from these representatives in 1996 and formed the HWC Working Group, composed of these volunteers. The Working Group has been the basis for gathering continuing input, which has been important in the development of the goals of this project. Appendix B contains a list of the HWC Working Group members.

1.7 The HWC Point of Contact

The HWC project welcomes all comments and inquiries concerning this report. Written communications may be sent to: Philip M. Corn, HWC project, Internal Revenue Service, W:E:SPS:STAWRS, 1111 Constitution Avenue NW, Washington, DC 20224. The e-mail address is: Phil.Corn@irs.gov. The fax number is: 202-622-8525.

1.8 The HWC Database

STAWRS created and maintains a repository of information relating to each state's degree of harmonization for each component. The repository is known as the HWC database (or simply "the database"). An on-line version can be found at http://www.biztax.gov/hwc/hwc_db.htm. For every state, the database characterizes each type of compensation as an instance of a match, partial match, no match, no provision, or not applicable to income tax withholding. Where appropriate, the database also includes the relevant law(s), or "supplemental authority," that led to a particular designation. Because of its query- and report-generating capabilities, the database

served as a valuable tool for the HWC project during the development of the HWC/ITW blueprint.

2. DEVELOPING A HARMONIZED WAGE CODE FOR INCOME TAX WITHHOLDING

From the outset of the project, it was considered essential that an analysis be made of all federal and state employment tax laws, the structure of which is complex and confusing. The premise behind employment tax laws is that all wages are income, but not all income is wages, and therefore, is not subject to income tax withholding. The result of this premise is the creation of laws with multiple exceptions. An additional difficulty is that components are excepted from different laws. For example, a component might be excepted from “wages” under the FICA, but excepted from “employment” under a state law. The end result is the same, however it is easy to see the confusion that this creates.

To develop the HWC/ITW, the project conducted an in-depth analysis of the 43 income tax withholding laws. Eighty-nine components in the 96 employment tax laws deal with ITW. An analysis had to be completed to understand how the laws related to each other, and how consistency could best be achieved for each component.

42 state and the federal income tax withholding laws were analyzed and compared.

The key definitions that were analyzed came from wage-related tax and withholding laws in the 43 separate laws, including the federal ITW and 42 state ITW jurisdictions. Initial results showed substantial consistency and inter-dependence of state and federal provisions, i.e., many states refer explicitly to the federal income tax withholding provision, with most state ITW provisions in substantial agreement with the federal ITW provisions.

2.1 Research Methodology

The HWC project used a comprehensive methodology to develop a blueprint. They examined the 89 ITW components and developed criteria that should be met for the component to be included in the definition of wages in the blueprint. The criteria for inclusion or exclusion of each component are explained in the section below.

2.1.1 Criteria for Inclusion/Exclusion of Components

The provisions of the 43 laws were reviewed, analyzed, sorted, and compared. In general, a component was considered to be a good candidate for inclusion in the blueprint if it had a relatively large number of matches or partial matches associated with it. Conversely, components with a relatively small number of matches or partial matches associated with them were generally considered inappropriate for harmonization at this time (and therefore, excluded from the blueprint).

Additionally, several provisions have large numbers of “no provisions” associated with them (that is, instances of states that do not explicitly mention that component in their wage code). Often, those states have a “blanket provision” stating that the provision in question follows one or more federal rules. But if a state follows a federal rule on a certain provision, then that provision is for all intents and purposes a “match” as we have defined the term. These instances of “no provision”

were treated as if they were matches. Finally, components were examined to determine their effect on employers. Provisions that had large-scale effects were more likely to be included; and provisions that applied to only small segment of the population were more likely to be excluded.

Unless otherwise noted, the rationale described above was used to analyze each of the 89 components. Any provision of state or federal law that is not part of the HWC/ITW may or may not be changed. For example, provisions dealing with agricultural labor remain effective and unchanged and that fact will be noted in the blueprint proposals. Additionally, “wage” definitions that are not in the blueprint are no longer “exclusions.” This means, in order to harmonize, jurisdictions will have to modify their law with regard to income tax withholding.

2.2 Potential Impact on Employers

The HWC project reviewed the results of their component analysis and suggestions from the Working Group to determine the potential impact on employers of adopting a blueprint. The project determined that employers could be affected through changes in wage reporting, overhead expenses, and how the business is organized.

The impact of harmonized income tax withholding laws on wage reporting is positive; with employers experiencing a decrease in time and associated labor required to understand filing requirements, to keep necessary records, to file and make payments, and to respond to government queries and notices. This is a result of simplified requirements and increased consistency across revenue provisions, both state and federal.

Businesses could be affected economically from changes in overhead expenses or in the amount of taxes owed.¹¹ Presumably harmonization would reduce overhead expenses through greater efficiency and the burden reduction previously described. An employer’s employment tax liability could increase or decrease in terms of dollar amounts relative to differences between the revised legislation and prior state law. The growth or reduction in the number of businesses by business type and improvements or decreases in the profitability of businesses due to code changes are a few examples of how businesses may be affected by the adoption of an HWC/ITW.

There are similar considerations with regard to the impact of an HWC/ITW on workers. The creation or loss of jobs due to changes in the code is an example of how the HWC/ITW may economically impact an individual. Specific areas of concern for a jurisdiction may also include economic impacts on individuals by income class and/or special categories, such as survivors or occupational categories. Because of the way most employment tax codes are written, the greatest impact appears to apply to occupational categories.

2.3 Potential Impact on States

Increases or decreases in the number and type of businesses and jobs due to adoption of an HWC/ITW must be considered. The project’s recommendations are assumed to be revenue-neutral; however, certain revenue categories such as types of businesses, or occupations, may be positively or negatively impacted. Further, each jurisdiction must consider the impact on the resources required to support return and payment processing. Possible changes in workload due to changes in the law include the number, type, and salary levels of employees required to support

return and payment processing; data processing equipment, software, and networks; and facility requirements.

2.4 Institutional Impact on a Jurisdiction

Autonomy is a particularly sensitive consideration for each jurisdiction. Adoption of the HWC/ITW concept could have a negative impact on a jurisdiction's ability to make judgments about who and what to include or exclude

in the HWC/ITW. Equally important is the jurisdiction's ability to administer programs without undue interference from other jurisdictions, both state and federal. A second impact could be an increase or decrease in cooperation between and among jurisdictions. Finally, there is a potential impact on the development of regulations to support any changes in the law.

Ultimately, any proposal to create or change an HWC would be a suggestion, not a mandate.

Ultimately, any proposal to create or change an HWC would be a suggestion, not a mandate. While the most desirable effect of an HWC/ITW would be that all jurisdictions adopt the same law, the project recognizes that any given jurisdiction may have different views about some components and may not legislate conformity for them, even if it adopts most of the HWC/ITW blueprint. Further, over time, it is likely that changes in the economy and in the structure of the employer-employee relationship will generate new and different components that are not reflected in the blueprint.

3. ISSUES RELATED TO THE DEVELOPMENT OF AN HWC/ITW

Feedback from the HWC Working Group was instrumental in formulating the HWC/ITW. The knowledge and experience of HWC Working Group members was vital in making decisions as to what should and should not be included in the HWC/ITW. The HWC project adopted a suggestion from the HWC Working Group to make HWC/ITW inclusion/exclusion decisions based on the frequency and significance of any given component. As a result, the majority of components were included based on their frequency in the 43 income tax withholding laws. Conversely, many components were eliminated because they were found in only a few jurisdictions. Finally, some components were included due to political considerations and their ability to simplify current practices.

A brief explanation of why some provisions were included in the HWC/ITW blueprint, while others were excluded, is given below. An in-depth component-by-component analysis and the HWC project recommendations to include and exclude components is presented in Appendix C, HWC/ITW Issues. The HWC project considered areas that historically have received special attention – for example, agricultural labor and the fishing industry. The project’s analysis showed that the components that apply to agricultural labor are fairly unique. The rules are significantly different, and the tax forms are specialized. The difficulty in harmonizing these rules was deemed too great to attempt. Therefore, agricultural labor provisions are not included in our recommendations. However, while there are separate components for the fishing industry, the forms are the same, and the rules are fairly uniform throughout the country. Thus, the components with regard to the fishing industry were included.

Also, other special provisions were not considered for inclusion in the HWC/ITW. These include special provisions for direct sellers and real estate agents; separate provisions provide that these are independent contractors.

3.1 Instances of “No Provision”

Many jurisdictions have “no provision” for certain components. The project found that, in most instances, the states defer to the federal rule. If a state does not follow the recommended positions, it may have to consider these “no provision” components individually when it pursues adoption of the HWC/ITW blueprint.

3.2 Additional Components Considered for the HWC/ITW

While the HWC/ITW deals primarily with “wage” definitions, it was also necessary to go beyond wage definitions to include some other components, such as non-wage definitions and other provisions recommended for harmonization. These additional issues include voluntary withholding in Internal Revenue Code (IRC) §3402 (o), third party sick pay, Supplemental Unemployment Compensation Benefits (SUB) under IRC §3402 (o), voluntary withholding on pension plans, voluntary withholding on vehicle fringe benefits, and the included/excluded rule of IRC § 3402 (e). These are defined as a part of the HWC/ITW blueprint and are recommended for inclusion. The HWC/ITW blueprint can be found in Appendix D. Additionally, a summary chart of those components included in the HWC/ITW blueprint can be found in Appendix E.

4. CONCLUSION

The blueprint produced by the HWC project is designed to help alleviate employer tax and wage reporting burden. An important aspect of aligning the HWC goals with those of the IRS is the effort to simplify and clarify the tax laws employers must follow, thereby strengthening the federal-state partnership in tax code reform. The HWC/ITW Report clarifies the revenue provisions of the tax laws employers must follow.

The HWC/ITW is based primarily on the federal income tax withholding laws, and most states already have substantially identical laws for state income tax withholding. However, full harmonization could require some changes by both states and the federal government. There are dozens of components that are specific to only one or two jurisdictions. The HWC project believes that in the interest of harmony and simplification, those components should not be included in the blueprint. The HWC/ITW blueprint, located in Appendix D, is presented for consideration by all jurisdictions. It is the project's hope that state tax administrators will give consideration to burden reduction for their employers; namely simpler and fewer regulations and procedures, less intimidating record keeping, and fewer and less complicated forms; and propose this blueprint to their legislatures for adoption.

APPENDIX A

ACROYNMS

ACRONYMS

ABA	American Bar Association
APA	American Payroll Association
EDI	Electronic Data Interchange
FICA	Federal Insurance Contribution Act (Social Security and Medicare taxes)
FLS	Federal Liaison Services, Inc.
FTA	Federation of Tax Administrators
FUTA	Federal Unemployment Tax Act
HWC	Harmonized Wage Code
HWC/ITW	Harmonized Wage Code for Income Tax Withholding
HWC/UI	Harmonized Wage Code for Unemployment Insurance
IRA	Individual Retirement Account
IRC	Internal Revenue Code
IRS	Internal Revenue Service
ITW	Income Tax Withholding
OMB	Office of Management and Budget
SEP	Simplified Employee Pension Plan
SSA	Social Security Administration
STAWRS	Simplified Tax and Wage Reporting System
SUB	Supplemental Unemployment Compensation Benefits
SUI	State Unemployment Insurance Contributions (tax laws)
THWC	Targeted Harmonized Wage Code
UI	Unemployment Insurance
VAN	Value Added Network

APPENDIX B
HWC Working Group Members

HWC Working Group Members

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Michael Baran, New York Department of Labor
Sandy Bay, Montana Department of Revenue
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David Clark, American Bar Association
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Verenda Smith, Federation of Tax Administrators
Vicki Smith, Texas State Comptroller of Public Accounts
Bill Whitt, U.S. Department of Labor

APPENDIX C

HWC/ITW Issues

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 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.

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.

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.

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 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 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.

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.

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.

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.

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.

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.

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.

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 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.

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.

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.

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.

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.

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.

APPENDIX D
An HWC/ITW Blueprint for Legislation

THE HWC/ITW BLUEPRINT

After a full review of the data and careful consideration of the comments and suggestions from the HWC Working Group and other sources, the HWC project now recommends a “blueprint” for a Model Law. While developing the HWC/ITW, it became apparent that writing a model law for the HWC/ITW would be difficult, and perhaps counterproductive, leading to further delays. Therefore, the HWC project is making its recommendations through a “blueprint” concept, outlining those provisions that should be harmonized, and therefore included in the HWC/ITW, and those that should be eliminated, or excluded from the HWC/ITW. In the latter case, exclusion from the HWC/ITW means that the item would then become subject to withholding (unless it not includible in gross income). Some items were excluded from the HWC/ITW due to their lack of necessity or ease of incorporation. The HWC Working Group felt, in these instances, that those provisions would be better dealt with separately. The agricultural labor provisions are an example.

The blueprint is presented in three sections: wage exceptions, definitions of other wage-related provisions recommended for harmonization, and additional provisions to be adopted with the HWC/ITW. Section A, the list of definitions excepting certain components from withholding, comports with the procedure followed in every income tax withholding law. That is, “wages” are defined as “all remuneration for services performed by an employee for an employer except the following.” However, the HWC project review of existing income tax withholding laws, coupled with a general knowledge of the federal and state employment tax laws, highlighted additional provisions, including non-wage definitions (such as “fiscal year”) and other additional provisions, that should be harmonized as well. These additional provisions, such as IRC §3508 dealing with real estate agents and door-to-door salespersons, are significant across jurisdictional lines.

All other “wage exceptions” in the federal and state income tax withholding laws, not included in Section A, are excluded from the blueprint. They would no longer be “exceptions” and would now be subject to income tax withholding. With respect income tax withholding laws, an important point to make is that there is an inconsistency in the format of the federal and state income tax withholding laws. Theoretically, if remuneration that constitutes wages is not includible in gross income, it is not and cannot be subject to income tax withholding. Arguably, all of the exceptions from wages in the federal income tax withholding laws are unnecessary. However, they are there and presumably act as sign posts. We have included a provision that excludes from withholding any “wage” not includible in gross income. Nevertheless, we follow the current architecture, at least to provide clarity to taxpayers.

THE THREE SECTIONS OF THE HWC/ITW BLUEPRINT

Section A differs from Sections B and C in one very important respect. The list of wage exceptions in Section A is exclusive; if a wage exception is not listed, it would become subject to withholding upon adoption of the HWC/ITW. Sections B and C are not exclusive. Therefore, adoption of the HWC/ITW would not affect any other definitions or provisions that jurisdictions wish to maintain.

A. ELEMENTS OF REMUNERATION FOR EMPLOYMENT EXCLUDED FROM THE DEFINITION OF “WAGES”:

In analyzing the income tax withholding laws and the definition of wages, the basis for comparison was the federal provision, unless there was no federal provision. Thus, the citations in the following list refer to the federal provisions, unless otherwise noted.

1. Combat pay excludable under IRC §112. Issue 218.
2. Exclusion of wages paid for services performed by a non-resident alien as described in IRC §3401(a)(6). Issue 223.
3. Exclusion of wages paid in a foreign nation. These are wages that may be excluded from gross income under IRC §911. Issue 224.
4. Exclusion of wages paid to employee retirement savings. See IRC §219. Issue 251.
5. Scholarships and fellowships exclusion. See IRC §117. Issue 234.
6. Employment Achievement Awards. See IRC §§74(c) and 3401(a)(19). Issue 235.
7. Employer payment of employee FICA or UI taxes.
8. Share of the catch fishing exception. See IRC §§3401(a)(17) and 3121(b)(20). Issue 231.
9. Pay for services not in a trade or business. See IRC §3401(a)(4). Issues 221 and 238.
10. Newspaper delivery wage exception. See IRC §3401(a)(10). Issues 226 and 227.
11. Wages for domestic service. See IRC §3401(a)(3). Issue 220.
12. Fees paid to a public official. See IRC §3401(a). Issue 217.
13. Exclusion of wages for service for a foreign government or international organization. See IRC §3401(a)(5). Issue 222.
14. Vehicle fringe benefits. See IRC §3401(a)(19). Issues 180, 188, and 194.
15. Clergy. See IRC §3401(a)(9). Issue 225.
16. Non-cash payments to a retail salesperson exception. See IRC §3402(j). Issue 254.
17. Peace Corps service exception. See IRC §3401(a)(13). Issue 239.
18. Pensions and annuities. See IRC §3401(a)(12) and the THWC Report.¹²
19. Non-cash tips. See IRC §3401(a)(16)(A).
20. Medical care reimbursement. See IRC §3401(a)(20).
21. Accident and health plans. See IRC §106 and the THWC Report.
22. Medical savings plans. See IRC §3401(a)(21).
23. Cafeteria plans. See IRC §125 and the THWC Report.
24. Meals and lodging. See IRC §119 and the THWC Report.
25. Moving expenses. See IRC §217 and the THWC Report.
26. Death benefits. See the THWC Report.
27. Dependent care. See IRC §129 and the THWC Report.
28. Sick pay. See the THWC Report.

29. Fringe benefits. As defined in IRC § 132 and the THWC Report.
30. Employee business expense reimbursements. See the THWC Report.
31. Supplemental unemployment compensation. See IRC §3402(o)(2). Issue 264.
32. Group term life insurance on the life of an employee. See IRC §3401(a)(14) and the THWC Report.
33. Any remuneration not included in gross income.

B. DEFINITIONS OF OTHER WAGE-RELATED PROVISIONS RECOMMENDED FOR HARMONIZATION:

1. Definition of “Fiscal Year.” See IRC §7701(a)(24). Issue 216.
2. Definitions of “Fiduciary.” Fiduciary includes trustees, etc. See IRC §7701(a)(6). Issues 210 and 215.
3. Definition of “Person.” See IRC §7701(a)(1) Issue 185.
4. Definition of “Individual.” See, e.g., Ariz. Rev. Stat. Ann. §43-104(12). Issue 207.
5. Definition of non-resident alien. See IRC §7701(b)(1)(B). Issue 201.
6. Definition of employer. See IRC §3401(d). Issue 175.
7. Definition of a State. See IRC §7701(a)(10). Issue 178.
8. Definition of United States. See IRC §7701(a)(9). Issue 186.
9. Definition of “domestic service.” See IRC §31.3401(a)(3)-1.
10. Definition of “resident alien.” See IRC §7701(b)(1)(A). Issue 197.
11. Definition of “corporation.” See IRC §7701(a)(3). Issue 213.
12. Definition of “domestic corporation” and “partnership.” See IRC §7701(a)(4). Issue 192.
13. Definition of “employer.” See IRC §3401(d)(1). Issue 176.

C. PROVISIONS TO BE ADOPTED WITH THE HWC/ITW:

There are a number of provisions that should be adopted in conjunction with the HWC/ITW. The HWC Working Group discussed the problem of determining what additional provisions, beyond the wage definitions, should be included. On the basis of these discussions, the HWC project recommends the following provisions for adoption with the HWC/ITW. These additional provisions will enhance ease of application, thereby reducing employer burden.

1. Sick pay not considered wages subject to voluntary withholding. See IRC §3402(o)(2)(C). Issue 263.
2. Third party sick pay subject to voluntary withholding. See IRC §§3402(o), 3505, 3504; Treas. Reg. §31.3402(o)-3(a); Treas. Reg. §31.3505. Issue 190.
3. Employer includes a person paying wages on behalf of a non-resident alien. See IRC §3401(d)(2). Issue 177.
4. Pensions and annuities distributions described in IRC §3405. Issue 261.
5. Annuity payments and voluntary withholding. See IRC §§3401(a)(12)(A), (B), and (C); and 3402(o)(2)(B). Issues 262 and 228.
6. Direct Sellers and Real Estate Agents under IRC §3508.
7. Included/excluded rule. See IRC §3402(e).
8. Non-qualified deferred compensation plans.
9. Vacation Pay. See the THWC Report.

10. Payments for Jury Duty. See the THWC Report.
11. Tips. The term "wages" includes tips received by an employee in the course of his employment. Such wages shall be deemed to be paid at the time a written statement including such tips is furnished to the employer pursuant to §6053(a) or (if no statement including such tips is so furnished) at the time received. See the THWC Report.
12. Payroll Period. The term "payroll period" means a period for which a payment of wages is ordinarily made to the employee by his employer, and the term "miscellaneous payroll period" means a payroll period other than a daily, weekly, biweekly, semimonthly, monthly, quarterly, semiannual or annual payroll period. See IRC §3401(b).
13. Employee. The term "employee" includes an officer, employee, or elected official of the United States, a State, or any political subdivision thereof, or the District of Columbia, or any agency or instrumentality of any one or more of the foregoing. The term "employee" also includes an officer of a corporation.
14. Employer. The term "employer" means the person for whom an individual performs or performed any service, of whatever nature, as the employee of such person, except that:
 - (1) if the person for whom the individual performs or performed the services does not have control of the payment of the wages for such services, the term "employer" (except for purposes of Subsection (a)) means the person having control of the payment of such wages, and (2) in the case of a person paying wages on behalf of a nonresident alien individual, foreign partnership, or foreign corporation, not engaged in trade or business within the United States, the term "employer" (except for purposes of Subsection (a)) means such person.
15. The term "number of withholding exemptions claimed" means the number of withholding exemptions claimed in a withholding exemption certificate in effect under §3402(f), or in effect under the corresponding section of prior law, except that if no such certificate is in effect, the number of withholding exemptions claimed shall be considered to be zero.

APPENDIX E
Summary Chart for HWC/ITW Blueprint

HARMONIZED WAGE CODE FOR INCOME TAX WITHHOLDING SUMMARY CHARTS

A. Elements of Remuneration Excluded from the Definition of “Wages”:

Section	Provision
1.	Combat Pay
2.	Wages paid for services by a non-resident alien
3.	Section 911 exclusion
4.	Employee Retirement Savings
5.	Scholarships and fellowships
6.	Employment Achievement Awards
7.	Employer Payment of Employee FICA and UI taxes
8.	Fishing – share of the catch
9.	For services not in a trade or business
10.	Newspaper delivery
11.	Domestic Service
12.	Fees paid to a public official
13.	Services for a foreign government or international organization
14.	Vehicle fringe benefits
15.	Clergy
16.	Non-cash payments to a retail salesperson
17.	Peace Corps
18.	Pensions and Annuities
19.	Non-cash tips
20.	Medical care reimbursements
21.	Accident and health plans
22.	Medical savings plans
23.	Cafeteria plans
24.	Meals and lodging
25.	Moving expenses
26.	Death benefits
27.	Dependent care
28.	Sick pay
29.	Fringe benefits as defined in IRC §132
30.	Employee business expense reimbursements
31.	Supplemental unemployment compensation
32.	Group term life insurance on life of an employee
33.	Any remuneration not includible in gross income

B. Definitions of Other Wage-Related Provisions Recommended for Harmonization:

Section	Provision
1.	Fiscal Year
2.	Fiduciary
3.	Person
4.	Individual
5.	Non-resident alien
6.	Employer
7.	State
8.	United States
9.	Domestic service
10.	Resident alien
11.	Corporation
12.	Domestic corporation and partnership

C. Additional Provisions to be Adopted with the HWC/ITW Blueprint:

Section	Provision
1.	Sick pay not considered wages subject to voluntary withholding
2.	Third party sick pay
3.	Employer paying wages for a non-resident alien
4.	Pension and annuity distributions described in IRC §3405
5.	Direct sellers and real estate agents
6.	Included/excluded rules
7.	Non-qualified deferred compensation plans
8.	Vacation pay
9.	Payments for jury duty
10.	Payroll period
11.	Employee
12.	Employer
13.	Number of withholding exemptions claimed
14.	Tips

ENDNOTES

¹ The views and suggestions herein are solely those of the HWC Project, based on its own research and the input and recommendations of interested stakeholders, including members of the Harmonized Wage Code Working Group. Nothing herein should be taken to imply or infer that this report and its recommendations have been reviewed or approved by the Internal Revenue Service, the Treasury Department, the Social Security Administration, the Department of Labor, or any other federal or state agency.

² Based upon a suggestion of the Harmonized Wage Code Working Group, the Harmonized Wage Code dealing with FICA, FUTA, and SUI is now called the Harmonized Wage Code for UI (or HWC/UI).

³ In the course of many discussions with stakeholders, we came to understand that the States are not interested in changing their respective payment rules and dates. Therefore, we are not planning any recommendations on this issue. Recommendations on harmonizing “filing dates” will be made in the Harmonized Wage Code for UI Report.

⁴ 42 states, including the District of Columbia.

⁵ The structure may be the same or similar, but the content varies.

⁶ The jurisdictions whose laws we researched included the 50 states, the District of Columbia and the United States.

⁷ Recommendations for changes to the tax laws must be approved by Treasury and the Office of Management and Budget (OMB).

⁸ Montana has made great strides in this regard, and has even combined its revenue and UI tax departments.

⁹ Evidence of this is found in the enactment of the many uniform codes by the states, such as the Uniform Commercial Code.

¹⁰ The HWC Project has not dealt with the difficult issue of defining an employee under the common law rules, as defined in the federal employment tax regulations. This is an issue that Congress has reserved to itself under §530 of the Revenue Act of 1978.

¹¹ It is important to note that the overall intent of the HWC Project is to be revenue-neutral, although any changes in the laws could have some revenue impact on selected groups of employers and employees.

¹² THWC refers to the fact that these items (not otherwise listed) are included in the 14 components of the Targeted Harmonized Wage Code recommendation.