



Revenue Ruling No. 08-004
February 6, 2008
Withholding Tax

When Does an Employer Have to Withhold Louisiana Income Taxes from Employees

Purpose

The purpose of this Revenue Ruling is to address when an employer, who is a Louisiana business, is obligated to withhold Louisiana income taxes from its employees. Below is a fact pattern that illustrates the different withholding situations that a Louisiana-based employer might encounter. After the statement of facts, this ruling will address common withholding questions that arise from the facts concerning different types of employees.

Statement of Facts

Company A is a Louisiana-based franchisor. The system has over 300 franchised locations in more than half the states. The company's corporate location is in New Orleans, LA. Company A employs several team members who reside in states other than Louisiana. When hired, team members report to Louisiana for four to six weeks for orientation and training. Team members work as part of the staff at Company A's corporate store in New Orleans for a number of weeks and additional training takes place at other Louisiana locations. Once the four to six weeks of training is over, team members visit franchised locations within a selected territory consisting of the employee's resident state as well as other states. The team members consult with the owner/manager of each franchised location to discuss adherence to the system and offer suggestions for operations. All direction and control for the franchised locations comes from the corporate office in Louisiana. Team members do not engage in any sales transactions and no money is collected by the team members. Team members are paid an annual salary for work performed and no direct income is generated from their visits to their assigned stores.

Discussion

Revised Statutes 47:112(A) states that every employer making a payment of wages to an employee shall deduct and withhold a tax from those wages as provided for by withholding tables as promulgated by the Secretary of the Department of Revenue. R.S. 47:111(C) defines employee as a resident or nonresident individual of Louisiana who performs any service in the state for wages or any resident of Louisiana who performs any services outside of the state for wages. For example, if a nonresident employee performs services in Louisiana, the withholding tax shall be deducted and withheld from all wages paid with regard to those services. If a nonresident employee performs services partly within and partly without the State, only wages for services within the State are subject to withholding. While the statute requires an employer to withhold income taxes on services provided by a Louisiana resident either in or out of Louisiana, the Department does not penalize an employer for failure to withhold on a Louisiana resident for services performed in another state so long as income taxes are withheld for the state in which the services are performed. The reason for this practice is that Louisiana allows an income tax credit to its residents for taxes paid to another state. The employee therefore effectively will receive a credit against the Louisiana income tax on the out of state income and will ultimately owe little, if any, Louisiana tax on that income. If instead the employee is a Louisiana resident and working in a state that does not have an income tax, like Texas or Florida, the employer will be penalized for failure to withhold Louisiana income taxes on the income earned from services performed in the other state.

Ruling

Based on the facts given in the situation above, Company A should withhold on all team members, regardless of their state of residence, for the 4-6 weeks that they are trained in Louisiana. After the 4-6 weeks of training, Company A is not required to withhold income taxes on team members who are not residents of and do not perform any additional services in Louisiana. Company A should continue to withhold income taxes on wages for services perform in Louisiana regardless of the state of residency and regardless of the number of hours an employee worked in Louisiana. No de minimus withholding rule exists. Lastly, Company A should withhold income taxes on the wages of Louisiana residents for the performance of services in Louisiana and for the performance of services in other states so long as that state does not have an income tax. If a team member is a Louisiana resident and working in another state, the employer will not be penalized for failure to withhold Louisiana income taxes on wages earned in another state so long as the employer has withheld income taxes for the state in which the services are performed.

Cynthia Bridges

Secretary

A Revenue Ruling is issued under the authority of LAC 61III.101.C. A Revenue Ruling is written to provide guidance to the public and to Department of Revenue employees. It is a written statement issued to apply principles of law to a specific set of facts. A Revenue Ruling does not have the force and effect of law and is not binding on the public. It is a statement of the department's position and is binding on the department until superseded or modified by a subsequent change in statute, regulation, declaratory ruling, or court decision.