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John's *Free* Position Papers are *Educational, Entertaining, and Empowering* that provide definitions, procedures, website links for cross reference, and a Table of Contents for easy review.

#### Individual Income Withholding Tax Requirements for Business Travelers Between States

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Acting in or serving as a crew member for movies, television series, commercials, or promotional films for less than 90 days as well as Nonresident employees of rail carriers, motor carriers, water carriers, merchant seamen

#### Individual Income Withholding Tax Requirements for Business Travelers Between States

By John B. Goldhamer <u>www.JohnGoldhamer.com</u>

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If an employee performs both taxable and nontaxable services for an employer (for example, services performed in and outside Virginia) the entire payment for those services is subject to Virginia withholding if at least one-half of the services are taxable. If less than one-half of the employee's time is spent in services not subject to withholding, the entire payment is exempt. A nonresident employee is subject to North Carolina withholding on any part of his wages paid for performing services in this State. Any relief from double withholding must be granted by the employee's state of residence. Virginia Department of Taxation- Virginia Form 760 Resident Individual Income Tax Booklet Every Virginia resident whose Virginia Adjusted Gross Income is above minimum threshold must file. Virginia Adjusted Gross Income (VAGI) is your Federal Adjusted Gross Income (FAGI) from your federal return, plus Virginia Additions and less Virginia Subtractions. Virginia Tax Commissioner Ruling-Nonresident Working In and Out of Virginia May Apportion Salary The Department has previously ruled that nonresidents who work in Virginia may apportion their income between the state of residence and Virginia in proportion to the amount of time that they perform duties in each respective state. See Public Document (P.D.) 85-134, (6/18/85) The purpose of an Employer Withholding Tax Audit is to determine whether the employer withheld the proper amount of tax from employees' wages and compensation paid to other payees, reported and remitted the amount withheld to the state. If employees simply amend their state Individual Income Tax Return or file a new Individual Income Tax Return to recover the tax payment, in the end, for the audit the state gains the benefit of penalty and interest. 14 States Do Not Have an Individual Income Tax or have "Reciprocity Agreements" With Virginia Since nine (9) states "Do not have Individual Income Tax," then when traveling to those states from Virginia your wages would be allocated back to Virginia, which is your "Domicile." An additional five (5) states have Individual Income Tax "Reciprocity agreements" with Virginia so that again your wages would be allocated back to Virginia, which is your "Domicile." For the remaining 37 states, based on each jurisdictions law your employer should be required to charge you that state's Individual Income Tax Withholding, but you should be able to take a credit on your Virginia Individual Income Tax return for out-of-state Individual Income Tax paid. Since taxpayers may take a credit for income taxes paid to another state, then there might be only a temporary "Double Taxation" not a permanent one. As Virginia is your "Domicile" and your "Base of Operations," then the majority of your withholding will be for Virginia and each full weekday should be allocated to a state as follows: Leaving Virginia on Business -1. To Traveling State Working a Full Day on Business in Another State -To Working State 2 3. Traveling on Business From One State To Another -To Traveling State Traveling on Business Back To Virginia - To Virginia - To Virginia 4. Traveling on Business Back to Virginia After 5:00 P.M. - To From State 5. Appendix 2 of 16

#### **DEFINITIONS**

<u>Allocation</u> - The apportionment or assignment of income or expense for various tax purpose, e.g., between permanent establishments in various jurisdictions. <u>OECD-Glossary of Tax Terms</u>

<u>Apportionment</u> – A method used to allocate income or expenses using a formula consisting of some factors such as property, payroll, or sales, or even days or hours. <u>OECD-Glossary of Tax Terms</u>

<u>Base of Operations</u> - A place of more or less permanent nature from which the employee starts his work and to which he customarily returns in order to receive instructions from the taxpayer or communications from his customers or other persons, or to replenish stock or other materials, repair equipment, or perform any other functions necessary to the exercise of his trade or profession at some other point or points. A contractor's job site will be considered to be a base of operations. 23VAC10-120-200. When Compensation Deemed Paid in This Commonwealth

**Domicile** - A person's legal home. That place where a man has his true, fixed, and permanent home and principal establishment, and to which *whenever he is absent he has the intention of returning*. Black's Law Dictionary, Sixth Edition, p. 485

**<u>Domicile</u>** - The permanent place of residence of a taxpayer and the place to which he intends to return even though he may actually reside elsewhere.

In determining domicile, consideration may be given to the <u>applicant's expressed intent</u>, conduct, and all attendant circumstances including, but not limited to, *financial independence, business pursuits, employment, income sources, residence for federal income tax purposes, marital status, residence of parents, spouse and children, if any, leasehold, sites of personal and real property owned by the applicant, motor vehicle and other personal property registration, residence for purposes of voting as proven by registration to vote, if any, and such other factors as may reasonably be deemed necessary to determine the person's domicile. <u>§ 58.1-302. Definitions - Virginia Income Tax</u>* 

<u>Filing Status</u> - The filing status shown on your individual income tax return. It may be single, married filing jointly, married filing separately, head of household, or qualifying widow(er) with dependent child. <u>https://www.ssa.gov/OP\_Home/cfr20/418/418-2010.htm</u>

Virginia and most states do not require the same filing status as used on the federal return.

**Individual Income Tax** - A tax levied on the wages, salaries, dividends, interest, and other income a person earns throughout the year. The tax is generally imposed by the state in which the income is earned. However, some states have reciprocity agreements with one or more other states that allow income earned in another state to be taxed in the earner's state of residence.

In 2017, <u>41 of the 50 states and the District of Columbia (DC) levied a broad-based individual income</u> <u>tax</u>. New Hampshire taxes only interest and dividends, and Tennessee taxes only bond interest and stock dividends. Alaska, Florida, Nevada, South Dakota, Texas, Washington, and Wyoming did not tax individual income of any kind.

https://www.urban.org/policy-centers/cross-center-initiatives/state-local-finance-initiative/projects/state-and-local-backgrounders/individual-income-taxes

**Income Withholding Tax** - Tax on income imposed at source, i.e. a <u>third party is charged with the</u> task of deducting the tax from certain kinds of payments and remitting that amount to the government. Withholding taxes are found in practically all tax systems and are widely used in respect of dividends, interest, royalties and similar tax payments. The rates of withholding tax are frequently reduced by tax treaties. <u>OECD-Glossary of Tax Terms</u>

**Income Withholding Tax** - A portion of income tax that is subtracted for salary, wages, dividends, or other income before the earner receives payment. <u>Black's Law Dictionary</u>, Ninth Edition, p. 1598

#### **DEFINITIONS** (Continued)

**Interstate Withholding Tax** - Organizations with employees traveling for business between states must withhold and report the income an employee earns while working in states with an income tax. https://www.accountingtoday.com/opinion/the-tax-trap-in-interstate-business-travel

<u>Resident</u> - (1) any *individual domiciled in this Commonwealth* (domiciliary resident), and
 (2) any individual who is <u>not</u> domiciled in this Commonwealth *but who maintains a place* of abode (actual resident) in Virginia for more than 183 days [out of 396 or 51%] (in the aggregate) [Total combined] during the taxable year.
 § 58.1-302. Definitions - Virginia Income Tax

Virginia residents whose Virginia Adjusted Gross Income is above minimum filing threshold must file.

<u>**Resident- Part-Year</u>** - A person who moves into Virginia during the year with the intent of becoming a resident, or a person who moves out of Virginia during the year to become a resident of another state, is a part-year resident for income tax purposes. Part-year residents generally file Form 760PY. <u>https://www.tax.virginia.gov/residency-status</u></u>

<u>Nonresident</u>- Any natural person who is not a resident, actual or domiciliary, of Virginia. <u>§ 58.1-302. Definitions - Virginia Income Tax</u>

Nonresident Employee (Withholding Tax) - An employee or independent contractor who (A) Is <u>not</u> <u>a resident</u> or part-year resident of this state; (B) <u>Performs temporary services in this state</u> for one or more <u>nonresident employers</u>; and (C) <u>Has no other income from this state sources</u> except for income earned in connection with the performance of temporary services for one or more nonresident employers. <u>https://www.oregonlaws.org/ors/316.223</u>

**Nonresident Employer (Withholding Tax)** - An employer who (A) Has <u>no permanent place of</u> business within this state; and (B) <u>Employs qualifying nonresident employees</u> to perform temporary <u>services</u> in this state. <u>https://www.oregonlaws.org/ors/316.223</u>

<u>Reciprocity Agreements</u> - An agreement between two states allowing its residents to only pay tax on where they live, instead of where they work and to request an exemption from tax withholding. <u>http://www.cpapracticeadvisor.com/news/12268412/state-by-state-income-tax-reciprocity-agreements</u>

**Federal Area** – A military or naval reservation, federal agency or federal administration that is *inside the geographical boundaries of a state* is *considered a location in that state* and nonactive duty residents of those areas are *subject to state income tax* just like residents of any other location in the state. <u>Federal Buck Act - 4 U.S.C. §§105-113</u>

**Tax** - In a general sense, a tax is any contribution imposed by government upon individuals, for the use and service of the state, whether under the name of toll, tribute, tallage, gabel, impost, duty, custom, excise, subsidy, aid, supply, or other name. A charge, usually monetary imposed by the government on persons, entities, transactions, or property to yield public revenue. Most broadly, the term embraces all governmental impositions on the person, property, privileges, occupations, and enjoyment of the people, and includes duties, imposts, and excises. Black's Law Dictionary, Ninth Edition, p. 1594

#### Issue - Wage Withholding Woes

Is this <u>Double Taxation</u> since a taxpayer is charged twice the Withholding Tax for the same income? A resident of Virginia travels the U.S. for a large corporate employer. His employer has informed the team that they must post to a corporate website each state they work in and that the company will calculate and take out that state's Individual Income Tax Withholding Tax from the daily pay.

The company also stated that they do not plan to reduce the employees Virginia Individual Income Tax Withholding Tax payments.

#### Virginia Unemployment Tax

§ 60.2-217 of the Code of Virginia entitled "Employment within and without Commonwealth" states:

A. The term "<u>employment</u>"[for Unemployment] shall include an <u>individual's entire service</u>, <u>performed</u> within <u>or</u> both within and without this Commonwealth <u>if</u>:

1. The service is localized in this Commonwealth; or

2. The service is <u>not localized in any state</u> but <u>some of the service is performed in this</u> <u>Commonwealth</u> <u>and</u>

(i) the <u>base of operations</u>, <u>or</u>,

if there is no base of operations, <u>then the place from which such service is directed or</u> <u>controlled</u>, <u>is in this Commonwealth</u>; or

(ii) the <u>base of operations</u> <u>or place from which such service is directed or controlled</u> is <u>not in any state</u> in which some part of the service is performed, but the <u>individual's residence is in this Commonwealth</u>.

B. Services performed within this Commonwealth and not covered under subsection A of this section shall be deemed to be employment subject to this title *if taxes are not required* and paid with respect to such services under an unemployment compensation law of any other state or of the federal government. https://law.lis.virginia.gov/vacode/title60.2/chapter2/section60.2-217/

#### <u>Domicile</u>

Generally, an individual is a *"Resident*" of the state where they reside, where their driver's license is issued, and the place where they are registered to vote.

For Individual Income Tax purposes, they pay these taxes based on where they have a "Domicile."

The general definition of a "Domicile" is where; when you leave, you intend to return back.

Black's Law Dictionary defines "<u>Domicile</u>" as: "The place at which a person has been physically present and that the person regards as home; a person's true, fixed, principal, and permanent home, to which that person intends to return and remain even though currently residing elsewhere."

For Individual Income Tax purposes, your "Domicile" and your "Base of Operations" is Virginia.

#### Virginia Withholding Tax

*Virginia* Code § 58.1-461 provides that <u>employers must withhold taxes on wages of</u> <u>employees</u>. *Virginia* Code § 58.1-460 defines "<u>employee</u>" as "an individual, whether a resident or a nonresident of the Commonwealth, <u>who performs or performed any service in the Commonwealth for</u> <u>wages</u>, or a <u>resident of the Commonwealth who performs or performed any service</u> . . <u>. outside the</u> <u>Commonwealth for wages</u>." As such, an employee who earns wages while performing services in Virginia must have tax withheld regardless of whether the employee is a resident or a nonresident of virginia. Usually, when an employee is a resident of Virginia, all of his wages are subject to withholding.

Virginia Out-of-state Tax Credit for Income Tax Paid to Other States https://law.lis.virginia.gov/vacode/title58.1/chapter3/section58.1-332/

Public Document 14-163 (2014), Ruling of the Virginia Tax Commissioner states, "*As a matter of fairness and equity most states, including Virginia,* provide a mechanism to relieve residents from being taxed by both their state of residence and the state in which the income was derived. <u>Virginia's method of limiting taxation of income by more than one state</u> has been to <u>permit a credit for taxes paid to other states</u> pursuant to Va. Code § 58.1-332."

Virginia Code §58.1-332(A) provides that "Whenever a resident of the Commonwealth has become liable for income tax to another state, on earned or business income, or any part thereof, for the taxable year, derived from sources without the Commonwealth and subject to taxation under this chapter, the amount of income tax payable by him shall, upon proof of such payment, be <u>credited on his [Tax] return</u> with the <u>income tax so paid by him to such other state</u>."

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Credits for taxes paid to other states can be computed on *Virginia Schedule OSC* and then enter the total credit claimed on Line 25 of Virginia Form 760.

#### Virginia Department of Taxation

Income Tax Withholding Guide for Employers

https://www.tax.virginia.gov/sites/default/files/2016-12/employer-withholding-instructions-any.pdf

Virginia law conforms to the federal definition of income subject to withholding. Virginia withholding is generally required on any payment for which federal withholding is required.

#### Payments Exempt From Withholding

Payments that are exempt from federal withholding are also exempt from Virginia withholding. In addition, the following payments are exempt from Virginia withholding:

- Payments made for acting in or serving as a crew member for movies, television series, commercials, or promotional films that are filmed totally or partially in Virginia by an employer that conducts business in Virginia for less than 90 days and that edits, processes and markets the completed project outside Virginia,
- Payments made from an IRA or SEP,
- Payments made to nonresident employees of rail carriers, motor carriers, and water carriers,
- Payments made to resident and nonresident merchant seamen.

Virginia Employer Payments to Nonresidents Under State Reciprocity Agreements https://www.tax.virginia.gov/reciprocity

When you make wage or salary payments to a nonresident for services performed in Virginia, you typically must withhold Virginia income tax in the same manner as you would for a resident.

Virginia has entered into reciprocity agreements with other states for individuals who earn income in states other than their states of residence. The agreements allow those individuals to be taxed only by their state of residence on earned or business income, provided that certain conditions are met. The terms of the agreements eliminate a nonresident's liability for Virginia income tax, as well as the requirement for withholding from payments made for services performed in Virginia.

Current reciprocity agreements affect Virginia withholding requirements for residents of the following states:

Kentucky, the District of Columbia, Maryland, West Virginia, and Pennsylvania

#### Kentucky and the District of Columbia:

Wage and salary payments to residents of these states are not subject to Virginia withholding if the employees commute daily to a place of employment in Virginia.

## Maryland, West Virginia, and Pennsylvania: Goldhamer

Wage and salary payments made to residents of these states are not subject to Virginia withholding if the employees meet the following conditions:

- The employee maintains a legal domicile in another state and lives in Virginia for less than 183 days of the taxable year (or does not live in Virginia at all)
- The only Virginia source income received during the year was from salaries or wages
- The Virginia source income is subject to taxation by the individual's state of residence

Any nonresident who is exempt from Virginia withholding under a reciprocity agreement must indicate this on the Form VA-4, Employee's Exemption Certificate, filed with his or her employer.

Federal law has a number of limitations on states' withholding requirements (Title 49 U.S.C.A. § 14503)

Neighboring States Non-reciprocity - *Tennessee and North Carolina* Employer Payments to Other Nonresidents

Payments to the following nonresidents for services performed in Virginia are subject to withholding:

Residents of non-reciprocity states. This includes residents of neighboring states for which <u>Virginia has no reciprocity agreement</u> in place, as well as residents of other states who are working in Virginia on a temporary basis.

#### Virginia Partially Exempt Employment

If an employee performs both taxable and nontaxable services for an employer (for example, services performed in and outside Virginia) the *entire payment for those services is subject to Virginia withholding if at least one-half of the services are taxable.* If less than one-half of the employee's time is spent in services not subject to withholding, the entire payment is exempt. <u>https://www.tax.virginia.gov/sites/default/files/2016-12/employer-withholding-instructions-any.pdf</u>

> <u>North Carolina Department of Revenue</u> <u>Income Tax Withholding Tables and Instructions for Employers</u> <u>https://www.dor.state.nc.us/downloads/nc30\_2017.pdf</u>

5.(b) <u>Nonresident employees</u>. A nonresident employee is subject to North Carolina withholding on any part of his wages paid for performing services in this State. Any relief from double withholding must be granted by the employee's state of residence. See section 7 for information on withholding from nonresidents who receive non-wage compensation for personal services performed in North Carolina.

Therefore, since North Carolina is a non-reciprocity state, Virginia residents working in North Carolina must pay employment taxes to North Carolina and must complete a North Carolina income tax return, but they may receive an Out-of-state tax credit on their Virginia Individual Income Tax Return.

<u>Virginia Department of Taxation</u> VIRGINIA FORM 760 Resident Individual Income Tax Booklet https://www.tax.virginia.gov/sites/default/files/vatax-pdf/760-instr-08-09-17.pdf

Do You Need to File a Virginia Income Tax Return?

Every Virginia resident whose Virginia Adjusted Gross Income is <u>above minimum threshold</u> must file.

[Virginia Adjusted Gross Income (VAGI) is your Federal Adjusted Gross Income (FAGI) from your federal return, plus Virginia Additions and less Virginia Subtractions.]

Complete Form 760, Lines 1 through 9, to determine your Virginia adjusted gross income (VAGI). If the amount on Line 9 is less than the amount shown below for your filing status, your Virginia income tax is \$0.00 and you are <u>entitled to a refund of any withholding</u> or estimated tax paid. You must file a <u>return to receive a refund</u>. To claim a refund in these cases, Complete Lines 10 through 16 and enter "0" as your tax on Lines 17 and 19. Then complete Lines 20 through 38. You must file if you are:

Single and your VAGI is	\$11,950 or more
Married filing jointly and combined VAGI is	\$23,900 or more
Married filing separately and your VAGI is	\$11,950 or more

#### Apportionment

#### Virginia Tax Commissioner Ruling-Nonresident Working In and Out of Virginia May Apportion Salary

"The Department has previously ruled that <u>nonresidents who work in Virginia</u> <u>may apportion their</u> <u>income between the state of residence and Virginia in proportion to the amount of time</u> that they perform duties <u>in each respective state</u>. See Public Document (P.D.) 85-134, (6/18/85)" <u>https://www.tax.virginia.gov/laws-rules-decisions/rulings-tax-commissioner/99-109</u>

"The Department has previously ruled that a nonresident who works in Virginia may apportion his or her salary to Virginia using a ratio of (1) the <u>number of days</u> or portion thereof <u>spent in Virginia</u> <u>performing duties</u> for his or her employer, divided by (2) the <u>number of days</u> or portion thereof <u>spent</u> <u>anywhere performing duties</u> for his or her employer. See <u>Public Document 85-134</u> (6/18/85). As a general rule, the <u>Department uses 260 days in the denominator</u> of the ratio for determining wages attributable to Virginia. Taxpayers who claim to have worked more than 260 days during a given taxable year must document that claim."

https://www.tax.virginia.gov/laws-rules-decisions/rulings-tax-commissioner/06-71

"For future taxable years, the Taxpayer should <u>document the time he worked</u> in Virginia and elsewhere. Such <u>documentation should be in the form of a log, calendar, or schedule</u> providing sufficient details to <u>determine the days the Taxpayer worked</u>, the <u>number of hours worked each day</u>, and the <u>number of days worked in Virginia</u>."

https://tax.virginia.gov/laws-rules-decisions/rulings-tax-commissioner/10-29

## Employer Withholding Tax Audits

The purpose of an Employer Withholding Tax Audit is to determine whether the employer withheld the proper amount of tax from employees' wages and compensation paid to other payees, reported and remitted the amount withheld to the state.

Employer Withholding Tax Audits are designed to catch almost any individual that crosses jurisdictional boundaries so that the state may assess Tax, but most importantly Penalty and Interest.

If a state issues an Employer Withholding Tax Assessment because they did not withholding enough tax from employees, the employer has the right to request the tax amount from employees, although most employer will not make that request.

Most employers pay the tax, but inform employees that their withholding was increased, which then employees will *simply either amend their state Individual Income Tax Return or file a new Individual Income Tax Return to recover the tax payment*, so that in the end, for the audit the state only gains the benefit of penalty and interest.

Generally, when a state conducts an Employer Withholding Tax Audit, they will analyze, examine, and review:

1099's, W-2's, and W-4's, VA-4's Payroll Records, Travel Expenses, and Unemployment Payments

1099's are reviewed to ensure that the recipients were Independent Contractors and not actually employees. The Internal Revenue Service has established a 20-point checklist that may be used as a guideline in determining whether or not an independent contractor can be paid by Form 1099. Generally, for Employer Withholding Tax Audits of larger companies the state will analyze, examine, and review:

- Officers and highly-paid employees travel to nonresident states for board meetings etc.
- Unemployment insurance paid to state but no income tax withholding
- Expense reports show frequent travel to nonresident state
- Corporate jet log shows travel to nonresident state

#### **Conclusion**

#### 14 States Do Not Have an Individual Income Tax or have "Reciprocity Agreements" With Virginia

Since nine (9) states "<u>Do not have Individual Income Tax</u>," then when traveling to those states from Virginia your wages would be allocated back to Virginia, which is your "<u>Domicile</u>."

An additional five (5) states have Individual Income Tax "<u>Reciprocity agreements</u>" with Virginia so that again your wages would be allocated back to Virginia, which is your "<u>Domicile</u>."

For the remaining 37 states, based on each jurisdictions law your employer should be required to charge you that state's Individual Income Tax Withholding

Virginia Taxpayers should be able to take a credit on their Virginia Individual Income Tax return for out-of-state Individual Income Tax paid.

#### Summary Conclusion - Allocation or Apportionment of Wages

Is this <u>Double Taxation</u> since a taxpayer is charged twice the withholding tax for the same income?

Since Virginia Taxpayers may take a credit for income taxes paid to another state, then the answer to the issue is that there is only a "<u>Temporary Double Taxation</u>" not a permanent one. As Virginia is your "<u>Domicile</u>" and your "<u>Base of Operations</u>," then the majority of your withholding will be for Virginia. If your income in another state is below that state's threshold, then you should be able to simply file an Individual Income Tax Return in that state to recover the tax payment.

Since Virginia is your "<u>Domicile</u>" and because it is the location of your office, then it is your "<u>Base of Operations</u>." Since generally you are paid a "*Full Day's Wages*" to work only Monday through Friday, then only each of those weekdays or a full 8 hours each day should be allocated to a state as follows:

1. <u>Leaving Virginia on Business - To Traveling State</u>

When *leaving Virginia on business*, you are leaving your "<u>Domicile</u>," or your "<u>Base of Operations</u>," and you should <u>allocate your "Full Day's Wages</u>" to the state you are "<u>Traveling to</u>," unless it is one of the 14 states that do not have an Individual Income Tax or have "Reciprocity Agreements" with Virginia. In that case you should allocate your "<u>Full Day's Wages</u>" <u>back to Virginia.</u>

2. Working a Full Day on Business in Another State - To Working State

When working a full day on business in another state you should <u>allocate your</u> "<u>Full Day's Wages</u>" to the state you are "<u>Working in</u>," unless it is one of the 14 states that do not have an Individual Income Tax or have "Reciprocity Agreements" with Virginia. In that case you should allocate your "<u>Full Day's Wages</u>" <u>back to Virginia</u>.

3. <u>Traveling on Business From One State To Another - To Traveling State</u>

When traveling on business *from one state to another*, you should <u>allocate your</u> "*<u>Full Day's Wages</u>*" to the state you are "<u>Traveling to</u>," unless it is one of the 14 states that do not have an Individual Income Tax or have "Reciprocity Agreements" with Virginia. In that case you should allocate your "<u>Full Day's Wages</u>" <u>back to Virginia</u>.

4. Traveling on Business Back To Virginia - To Virginia

When traveling on business *back to Virginia* and it takes almost a full day to travel, then you are returning to your "*Domicile*," *or your "Base of Operations*." In that case you should <u>allocate</u> your "*Full Day's Wages*" *back to Virginia*.

#### 5. <u>Traveling on Business Back to Virginia After 5:00 P.M. - To From State</u>

When traveling on business *back to Virginia after 5:00 P.M.*, then you should <u>allocate your</u> "*<u>Full Day's Wages</u>*" to the <u>state you are leaving</u>, unless it is one of the 14 states that do not have an Individual Income Tax or have "Reciprocity Agreements" with Virginia. In that case you should allocate your "*Full Day's Wages*" *back to Virginia*.

Compensatory time and less than 8-hours should not be allocated.

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States with no state individual income tax are in red. States taxing only dividend and interest income are in yellow.

Nine U.S. states do not level a broad-based individual income tax. Some do tax certain forms of personal income:

<u>Alaska</u> – no individual tax but has a state corporate income tax. Like New Hampshire, Alaska has no state sales tax, but unlike New Hampshire, Alaska allows local governments to collect their own sales taxes. Alaska has an annual Permanent Fund Dividend, derived from oil revenues, for all citizens living in Alaska after one calendar year, except for some convicted of criminal offenses.

<u>Florida</u> – no individual income tax, but has a 5.5% corporate income tax. The state once had a tax on "intangible personal property" held on the first day of the year (stocks, bonds, mutual funds, money market funds, etc.), but it was abolished at the start of 2007.

<u>Nevada</u> – has no individual or corporate income tax. Nevada gets most of its revenue from sales taxes and the gambling and mining industries.

<u>New Hampshire</u> – has an Interest and Dividends Tax of 5%, and a Business Profits Tax of 8.5%. A Gambling Winnings Tax of 10% went into effect July 1, 2009 and was repealed May 11, 2011. New Hampshire has no sales tax.

South Dakota – no individual income tax but has a state corporate income tax on financial institutions.

<u>Tennessee</u> has a 6% tax on income received from stocks and bonds not taxed *ad valorem*. In 1932, the Tennessee Supreme Court struck down a broad-based individual income tax that had passed the General Assembly, in the case of *Evans v. McCabe*. However, a number of Attorneys General have recently opined that, if properly worded, a state income tax would be found constitutional by today's court, due to a 1971 constitutional amendment.

<u>Texas</u> – no individual income tax but imposes a franchise tax on corporations. In May 2007, the legislature replaced the franchise tax with a gross margins tax on businesses (sole proprietorships and some partnerships were automatically exempt; corporations with receipts below a certain level were also exempt as were corporations whose tax liability was also below a specified amount), which was amended in 2009 to increase the exemption level. The Texas Constitution places severe restrictions on passage of an individual income tax and use of its proceeds.

<u>Washington</u> – no individual tax but has a business and occupation tax (B&O) on gross receipts, applied to "almost all businesses located or doing business in Washington." It varies from 0.138% to 1.9% depending on the type of industry.

Wyoming has no individual or corporate income taxes.

#### Federation of Tax Administrators

State Income Tax Reciprocity and the Minnesota Study- Federation of Tax (2013) <u>https://www.taxadmin.org/assets/docs/Meetings/13rev\_est/hoheisel.pdf</u>

Reciprocity is an agreement between states that allows residents of one state to request exemption from withholding for wages earned in a second state.



If you work in	And you are a resident of	Submit this exemption form to your employer
District of Columbia	Anywhere other than the District of Columbia	D-4A
Illinois	Iowa, Kentucky, Michigan, or Wisconsin	IL-W-5-NR
Indiana	Kentucky, Michigan, Ohio, Pennsylvania, or Wisconsin	WH-47
lowa	Illinois	44-016
Kentucky	Illinois, Indiana, Michigan, Ohio, Virginia, West Virginia, or Wisconsin	42A809
Maryland	District of Columbia, Pennsylvania, Virginia, or West Virginia	MW 507
Michigan	Illinois, Indiana, Kentucky, Minnesota, Ohio, or Wisconsin	MI-W4
Minnesota	Michigan or North Dakota	MWR
Montana	North Dakota	NR-2
New Jersey	Pennsylvania	NJ-165
North Dakota	Minnesota or Montana	NDW-R
Ohio	Indiana, Kentucky, Michigan, Pennsylvania, or West Virginia	IT-4NR
Pennsylvania	Indiana, Maryland, New Jersey, Ohio, Virginia, or West Virginia	REV-419
Virginia	District of Columbia, Kentucky, Maryland, Pennsylvania, or West Virginia	VA-4
West Virginia	Kentucky, Maryland, Ohio, Pennsylvania, or Virginia	WV/IT-104R
Wisconsin	Illinois, Indiana, Kentucky, or Michigan	W-220

#### State-by-State Income Tax Reciprocity Agreements (2017)

http://www.cpapracticeadvisor.com/news/12268412/state-by-state-income-tax-reciprocity-agreements

Reciprocity agreements mean that two states allow its residents to only pay tax on where they live instead of where they work. For instance, this is particularly important to higher wage earners who live in Pennsylvania and work in New Jersey. Pennsylvania's top rate is 3.07%, while New Jersey's top rate is 8.97%.

The following states have reciprocal agreements:

State

**Reciprocity States** 

Arizona	California, Indiana, Oregon and Virginia
Illinois	Iowa, Kentucky, Michigan and Wisconsin
Indiana	Kentucky, Michigan, Ohio, Pennsylvania and Wisconsin
Iowa	Illinois
Kentucky	Illinois, Indiana, Michigan, Ohio, Virginia, West Virginia and Wisconsin
Maryland	Pennsylvania, Virginia, Washington, D.C. and West Virginia
Michigan	Illinois, Indiana, Kentucky, Minnesota, Ohio and Wisconsin
Minnesota	Michigan and North Dakota
Montana	North Dakota
New Jersey	Pennsylvania*
North Dakota	Minnesota and Montana
Ohio	Indiana, Kentucky, Michigan, Pennsylvania and West Virginia
Pennsylvania	Indiana, Maryland, New Jersey, Ohio, Virginia and West Virginia
Virginia	Kentucky, Maryland, Pennsylvania, Washington, D.C. and West Virginia
Washington, D.C.	Maryland and Virginia
West Virginia	Kentucky, Maryland, Ohio, Pennsylvania and Virginia
Wisconsin	Illinois, Indiana, Kentucky and Michigan

\*After nearly forty years, the reciprocity agreement between New Jersey and Pennsylvania ended on December 31, 2016. On September 2, 2016, New Jersey Governor Chris Christie signed a deal to terminate the agreement effective January 1, 2017, in a move that some believe may generate \$180 million in additional revenue for New Jersey.

This means that—for the first time since 1978—wealthy taxpayers who work in New Jersey, but live in Pennsylvania, will pay substantially higher income taxes.

#### A Patchwork of Complicated Nonresident Income Tax Laws

http://www.mobileworkforcecoalition.org/problem/

States currently have inconsistent, varying standards and requirements for employees to file personal income tax returns when traveling to a nonresident state for temporary work periods, and for employers to withhold income tax on employees who travel outside of their state of residence for temporary work periods.

Employees who travel outside of their states of residence for business purposes are subject to onerous administrative burdens because they <u>may be legally required to file an income tax return</u> in <u>every state in which they traveled</u>, <u>even if they were only there for one day</u>. Employers are required to incur extraordinary expenses in their efforts to comply with the states' widely divergent withholding requirements for employees' travel to nonresident states for temporary work periods.



### When is a nonresident employee subject to withholding?

Please note that this map only covers withholding. Many states have different (and usually lower) standards for imposing tax on nonresidents (that is, the employee may owe tax even where the employer is not required to withhold tax). *Map also does not include reciprocal agreements*.

More than half of the states that have a personal income tax require employers to withhold tax from a nonresident employee's wages beginning with the first day the nonresident employee travels to the state for business purposes (maroon - *brownish red* states on the map below). Other personal income tax states provide for a threshold before requiring tax withholding for nonresident employees (teal - *blue-green* states).

A Patchwork of Complicated Nonresident Income Tax Laws Employer Requirements - Employer Must Withhold If Nonresident Employee http://www.mobileworkforcecoalition.org/problem/ Arizona Is in the state for more than 60 days in a calendar year. California Earns in-state wages above the state's "Low Income Exemption Table." Connecticut Is in the state for more than 14 days in a calendar year. Is in the state for more than 23 days in a calendar year or if \$5,000 or more or Georgia 5% or more of total income attributable to GA Hawaii Is in the state for more than 60 days in a calendar year. Idaho Earns in-state wages of \$1,000 or more in a calendar year. Maine Is in the state for more than 10 days in a calendar year. Earns a specified amount in a calendar year (currently \$10,300). Minnesota New Jersey Earns in-state wages that equals or exceeds the employee's personal exemption in a calendar year. New Mexico Is in the state for more than 15 days in a calendar year. New York Is in the state for more than 14 days in a calendar year. Is Telecommuting for their own convenience for a New York-based employer. http://www.biglawinvestor.com/new-york-telecommuting-tax-penalty/ Is in the state for more than 20 days in a calendar year and is a resident of a North Dakota state that provides similar protections (such as reciprocal agreements; certain occupations not protected). Ohio Is in the state for more than 20 days in a calendar year. Oklahoma Earns in-state wages of \$300 or more in a calendar guarter. Oregon Earns in-state wages equal to or exceeding the employee's standard deduction. South Carolina Earns in-state wages of \$800 or more in a calendar year. Utah Employer (not employee) does business in the state for more than 60 days in a calendar year. Earns in-state wages equal to or exceeding the employee's personal exemptions <u>Virginia</u> and standard deduction or filing threshold Earns in-state wages equal to or exceeding the employee's personal exemptions. West Virginia Wisconsin Earns in-state wages of \$1,500 or more in a calendar year.