



JANUARY 2010

## Tax Legal Update

### Connecticut Adopts and Clarifies New Safe Harbor for Withholding on Nonresident Employee Wages . . . An Update With More to Come

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In December 2009, the Connecticut Department of Revenue Services (DRS) announced that it will recognize a 14-day safe harbor during which withholding on wages paid to Connecticut nonresident employees who perform services in Connecticut is not required.

The basic rules enunciated in Announcement AN 2009(9) include the following:

1. If an employee is expected to work more than 14 days of the year in Connecticut, withholding on all Connecticut wages is required.
2. Withholding is not required on the wages of other employees who perform services in Connecticut until an employee has worked more than 14 days, and withholding then is required only on Connecticut wages paid for the 15th and later days. There is no obligation to "catch up" by withholding on wages paid for the first 14 days.
3. The responsibility for filing returns and paying taxes rests with the employee, not the employer. The safe harbor relates only to withholding. It does not excuse the employee from paying Connecticut income tax on wages earned in Connecticut from day one.

The announcement also indicates that, for purposes of the safe harbor, a day is one during any part of which the employee performs services in Connecticut. It also makes clear that the safe harbor does not apply to entertainers and athletes.

AN 2009(9) is welcome news to employers as far as it goes, but it fails to address what employers are required to report as wages on the W-2's of employees who work in Connecticut but have tax withheld on only part of their Connecticut wages. Announcement AN 2010(3), published on January 11, 2010, and superseding AN 2009(9), partially corrects this omission by requiring that employers report Connecticut wages on their quarterly Connecticut withholding returns and file copies of every W-2 on which Connecticut wages are reported, even if no Connecticut income tax has been withheld. It has been brought to the DRS's attention that this requirement may not be compatible with commonly used payroll software because of the mismatch between Connecticut withholding and Connecticut wages paid. DRS is currently looking into how best to address this issue and has indicated that it will issue new guidance.

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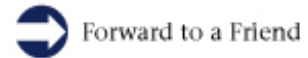
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