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LEGAL UPDATES

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Indiana Legislation Impacts Mobile Workforces and Asset Acquisitions

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On May 4, 2023, Indiana Governor Eric Holcomb signed legislation (Laws 2023, SB419) that, among other tax changes, included provisions to exempt from income tax nonresidents receiving compensation for employment duties performed in the state for 30 days or less, and to institute sales tax successor liability when more than one-half of the value of tangible personal property is obtained.

New nonresident income tax exemption

Today's mobile workforce features employees traveling to many states during the year for short or temporary projects or meetings. States have implemented a variety of rules as to when a nonresident becomes subject to income tax and, consequently, when an employer is required to withhold taxes on wages paid to nonresident employees working in the state.

While several proposed versions of federal legislation have been circulating for almost two decades which, if enacted, would be more favorable to employers, such federal legislation has failed to garner enough support to move forward. Approximately 20 states either do not impose an individual income tax or allow an employee to work at least fifteen days in the state before requiring employer withholding.

Beginning in 2024, the newly enacted IC § 6-3-2-27.5 exempts a nonresident individual from paying income tax on compensation received for performing employment duties in Indiana for 30 days or less during a calendar year. The exemption does not extend to professional athletes, professional entertainers, or public figures. While payroll departments will continue to navigate the myriad state withholding requirements, Indiana's change is a step towards simplifying the compliance burden.

New successor liability for sales tax

If an acquisition is structured as an asset sale, the purchaser will not assume the seller's liabilities in most transactions; however, such valuable protection does not always extend to sales tax liabilities of the acquired target when substantially all of the target's assets have been purchased.

Under Indiana's recent legislation (Laws 2023, SB419), the sales tax liability of the acquired target is transferred to the purchaser if more than one-half of the tangible personal property of the target is acquired. A purchaser can avoid this transfer of liability by notifying the Indiana Department of Revenue at least 45 days before taking possession of the assets. Within 20 days of receipt, the Department must mail either a tax clearance letter or a summary of the potential tax liabilities or filing issues.

Contact us

To learn more about these changes or for assistance with your other state tax needs, please contact Smitha Chintamaneni, Joseph Pickart, Robert Romashko, Bill Schenkelberg, or any other member of Husch Blackwell's State and Local Tax team.