

# *30th Annual Tax Symposium*

## **THE PANDEMIC WORKFORCE: TAX IMPLICATIONS OF PERKS PROVIDED BY EMPLOYERS ENTICING TOP TALENT**

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# OVERVIEW

- Remote Work: the Out-of-State Tax Conundrum
- Stipends and Shift Premiums: the Gifts that Come Back to Bite
- Increased Salaries: the Need for Payroll Audits and Assessing Equitable Pay

# REMOTE WORK: THE OUT-OF-STATE TAX CONUNDRUM

- Questions to consider when evaluating states where entity may have tax obligations:
  - Where is the employer doing business?
  - Where is the employer registered to do business?
  - Where is the employer paying employment taxes?



# REMOTE WORK: CASE STUDY

Michigan employer permitted an employee to work remotely from Remote State during the pandemic because it was the employee's "happy place in the woods." The employer tried to register as doing business in Remote State but was unable to accomplish this task in 2020 for reasons that were no fault of the employer. Thus, it paid the appropriate taxes as if this individual were a Michigan employee. In 2021, when it successfully registered as doing business in Remote State, it began paying taxes on the employee who was working remotely in Remote State.





# REMOTE WORK – PROBLEM



## State of Incorporation

- Registered to do business
- Paid employment taxes



## State of Remote Work

- Employer was NOT registered to do business
- Employer DID NOT pay employment taxes
- **EMPLOYEE PAID TAXES HERE!**
- **EMPLOYER ASSESSED FINES AND PENALTIES**

# REMOTE WORK – SOLUTION



## State of Incorporation

- Registered to do business
- **OBTAINED REFUND FOR employment taxes**



## State of Remote Work

- Employer **BECAME** registered to do business
- Employer **PAID** employment taxes
- Employer **REQUESTED** waiver of fines and penalties

# REMOTE WORK: TAX CONUNDRUM

Conflicts in tax responsibilities!

Where must the  
business pay taxes?



Where must the  
individual pay taxes?





# STIPENDS AND SHIFT PREMIUMS: THE GIFTS THAT COME BACK TO BITE

- Fair Labor Standards Act
  - Exempt versus Non-Exempt Employees
  - For Non-Exempt Employees, must pay overtime based on regular rate.
  - “Regular rate” is defined as: “all remuneration for employment paid to, or on behalf of, the employee.”
    - KNOW WHAT IS EXCLUDED FROM - AND INCLUDED IN - REGULAR RATE





# RED FLAGS PAYMENTS THAT ARE INCLUDED IN ESTABLISHING REGULAR RATE UPON WHICH OVERTIME IS DUE

- Cash in lieu of fringe benefits
- Reimbursement of expenses for the benefit of employee
- Lifestyle spending accounts
- Non-discretionary bonuses
- Shift premiums otherwise not excluded (e.g., less than 1.5 times regular rate)
- Split rates within a workweek



# STIPENDS AND SHIFT PREMIUMS: THE GIFTS THAT COME BACK TO BITE

- Know how to calculate regular rate upon which overtime is owed, when additional income must be included
- Even if not includable in regular rate, consider whether fringe benefits are taxable wages



# INCREASED SALARIES: THE NEED FOR PAYROLL AUDITS AND ASSESSING EQUITABLE PAY

- Classification – employee versus independent contractor
- If employee, exempt or non-exempt?
- Assess the various strata of employees, by position, years of experience, and other relevant factors to confirm whether pay is equitable for legitimate business reasons



# INCREASED SALARIES: THE NEED FOR PAYROLL AUDITS AND ASSESSING EQUITABLE PAY (CONT'D)

- Identify any significant gaps in pay and the respective reason for such discrepancies
- Evaluate how and when to resolve pay gaps that do not have a legitimate basis





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# THANK YOU



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