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Subject: New York State to Revise Withholding Audit Guidelines
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To Our Clients and Friends:

New York State has agreed in principle to certain revisions with respect to its withholding tax field audit guidelines. The revisions, described in detail below, are expected to be finalized in the near future, and implemented immediately for audit purposes.

By way of background, the guidelines (originally issued last September) memorialize New York State's new policy with respect to withholding requirements for employers with nonresident employees performing services within and without New York State. Included in the guidelines is a de minimis rule whereby withholding is not required on wages paid to certain nonresident employees assigned to a primary work location outside of New York State who perform services in New York State for 14 days or less during the calendar year (hereinafter, the 14-day rule). The guidelines, effective for all open periods, have forced many companies to alter their withholding policies.

Based on the revisions, employers would no longer be required to report wages on Form NYS-45 Part C (columns d and e), or report federal wages in the New York box on Form W-2, for employees who are not subject to withholding based on the 14-day rule. In addition, based on the revisions, employers would no longer be required to include a reasonable number of training days spent in New York State by an employee as days worked in New York State for purposes of determining whether the employee has exceeded the withholding threshold under the 14-day rule. Examples of training days would include in-house training courses, trade association conferences or symposia, and professional development workshops or seminars.

If you have any questions regarding the revisions or any other provisions of New York State's new withholding tax policy, please do not hesitate to contact me.

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