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

As a follow-up to my prior e-mail, please be advised that New York State has finalized its withholding tax field audit guidelines. The guidelines, which were previously issued in draft, are effective for all open periods. The guidelines 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.

The guidelines are likely to force many companies to alter their withholding policies. For example, the guidelines establish a de minimis rule whereby withholding is required on wages paid to certain nonresident employees assigned to a primary work location outside of New York State who perform services in the state for 15 or more days during the calendar year. Companies have wrestled with this issue in the past in terms of when to withhold on wages paid to nonresident employees performing services on an irregular basis in New York State.

The guidelines address other important issues, such as the circumstances under which an employer may rely on a Form IT-2104.1 furnished by an employee in determining the proper amount of wages to withhold on, the relationship of Form IT-2104.1 to the audit process, and penalty provisions (including transition to the new rules) for withholding tax noncompliance.

If you need assistance in interpreting New York State's new policy or would like a copy of the guidelines, please do not hesitate to contact me.

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