On the Go with Mobility Compliance

New York, New York

It's not breaking news that New York is infamous for aggressive audit activity on employer tax compliance for mobile employees, particularly business travelers. But how aggressive is the question?

As discussed during a recent Computershare webinar with Deloitte Tax, "On the Go with Mobility Compliance," New York continues to be one of the highest enforcement jurisdictions and is by and large the most important state to get right from a tax compliance perspective for your mobile employees who have been granted equity compensation.

Business professionals, particularly high-net-worth corporate executives, who live in other states but have business ties to New York, are your greatest risk area. Failing to meet income tax withholding requirements for these and other mobile employees can expose your company to significant business risks, which can include heavy fines, personal liability, reputational damage and restrictions on your ability to operate within a given state. These risks aren't hypothetical and the materiality of them can be significant. For example, as described further in the webinar, monetary penalties were imposed in each of these cases:

- New York required a company to prove executives did not visit NY during pre-IPO period; and
- New York assessed penalties for failure to withhold, even when no taxes were ultimately due.

Even if these specific scenarios aren't relevant to your company's operations, it's a good indication of just how seriously New York takes their rules regarding nonresident income tax compliance. The bottom line is, if you have mobile employees with ties to New York, you are a target.

Keeping track of your mobile population who have ties to New York and the tax burdens associated with them is absolutely vital. "Winging it" is not an option. Further, reliance on the 14-day de minimis rule—an exemption to withholding on wages paid to certain nonresidents who work 14 days or fewer in New York State, is also not an option. The exemption is only applicable to base compensation, not equity compensation.

Short of embedding your employees who visit the New York area with microchips, how do you track them and close the gap on compliance in this problematic state? Listen to a recording of the webinar to hear more about this topic and find out how you can get in front of this issue.