APA Government Relations Update

Washington Metropolitan Area Chapter
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Government Relations Initiative

- **Mission**
  - Educating government and community decision-makers about the payroll industry and the best practices associated with paying America's workers.
  - Significant emphasis is placed on minimizing the administrative burden on government, employers, payroll professionals, and individual workers.

- **Approach**
  - Led by members, the APA's Government Relations Task Force (GRTF) works with legislative and executive branches at the federal and state levels to assist payroll professionals with understanding their employers' legal obligations and advocating for more effective laws, regulations, policies, and guidance.

- **Key Goals**
  - Ensuring parity in employee tax assessments at the federal, state, and local levels;
  - Promoting clarity and ease in use of government forms and instructions, implementation of regulations and guidance documents, and responding to notices;
  - Pushing for unencumbered financial mechanisms for paying workers; and
  - Providing opportunities for open discussion and networking among members and with agency managers.

Federal Legislation

Commuter Benefits Parity

- APA's Position: For several years, the American Payroll Association has urged Congress to address the disparity in employer provided commuter benefits between transit and parking through letters to the Senate Finance Committee and House Ways and Means Committee.

- New Legislation
  - On December 18, 2015, President Obama signed H.R. 2029, the *Military Construction and Veterans Affairs, and Related Agencies Appropriations Act of 2016.* The bill is generally referred to as the *Consolidated Appropriations Act of 2016* because the legislation included 37 separate acts.

  - The *Protecting Americans from Tax Hikes Act of 2015,* or PATH Act, was an amendment added to H.R. 2029. The PATH Act restored parity retroactive to 2015, but made parity permanent beginning in 2016 with a monthly amount for both parking and transit of $255 per employee. The amount is indexed for inflation going forward. The retroactive provision can be a nightmare for payroll professionals. If an employer provided mass transit benefits in excess of the original 2015 amount ($130 per month) and treated the excess as taxable wages, employees will be overwithheld.

- APA in Action
  - November 2015: APA sent letters to Senators Charles Schumer (D-N.Y.), Robert Menendez (D-N.J.), and Richard Durbin (D-Ill.) suggesting that commuter benefits for parking and transit could be fixed through the highway funding bill.

  - December 2015: A letter was sent to Representative Kevin Brady (R-Texas), chairman of the U.S. House Committee on Ways and Means, and House and Senate leadership, over the *Commuter Benefit Parity Act of 2015* (H.R. 990).

  - Coalition: APA worked with a coalition of 52 organizations, called Commuter Benefits Work for Us (www.CommuterBenefitsWorkForUs.com). The coalition noted to Congress that, in September 2014, the Joint Committee on Taxation issued a statement saying that setting both parking and transit benefit caps at $235 per month would generate a net revenue increase of $131 million over the next 10 years. The coalition suggested that those funds could be applied to the Highway Trust Fund.

Mobile Workforce Bill

States currently have varying and inconsistent standards regarding income taxes for:

- *Employees* to file personal income tax returns when traveling to a nonresident state for temporary work periods; and

- E*mployers* to withhold income tax on employees who travel outside of their state of residence for temporary work periods.

Employees who travel outside of their states of residence for business purposes are subject to onerous administrative burdens because, in addition to filing federal and resident state income tax returns, they may also be legally required to file an income tax return in every other state into which they traveled, *even if they were there for only one day*.

Employers are required to incur extraordinary expenses in their efforts to comply with the states' widely divergent withholding requirements for employees' travel to nonresident states for temporary work periods.

<u>State Withholding Thresholds</u>
More than half of the states that have a personal income tax require employers to withhold taxes from a nonresident employee's wages beginning with the *first day* the nonresident employee travels to the state for business purposes. Some personal income tax states provide for a threshold before requiring tax withholding for nonresident employees.

There are no state income taxes in 9 states:

- Alaska
- Florida
- Nevada
- South Dakota
- Tennessee
- Texas
- Washington
- Wyoming

Nonresident employees are subject to tax withholding on the first day of travel in 20 states:

- Arkansas
- Colorado
- Connecticut
- Delaware
- Iowa
- Indiana
- Kansas
- Louisiana
- Massachusetts
- Maryland
- Michigan
- Missouri
- Mississippi
- Montana
- Nebraska
- North Carolina
- Ohio
- Pennsylvania
- Rhode Island
- Vermont

Nonresident employees are subject to tax withholding after reaching a threshold in 17 states. The following chart details these withholding thresholds. Note that this chart covers *withholding* only. Many of these states have a different (and usually lower) standard for imposing taxes on nonresidents (i.e., the employee may owe taxes even where the employer is not required to withhold taxes).

State	Income Tax Withholding is Required if the Employee is a Nonresident
Arizona	Is in the state for 60 or fewer days in a calendar year
California	Earns in-state wages equal to or below "Low Income Exemption Table"
Georgia	Is in the state for 23 or fewer days in a calendar year or if less than $5,000 or 5% of total income is attributable to Georgia
Hawaii	Is in the state for 60 or fewer days in a calendar year
Idaho	Earns in-state wages less than $1,000 in a calendar year
Maine	Is in the state for 10 or fewer days in a calendar year
Minnesota	If the amount expected to be paid is less than the minimum amount for requiring someone to complete a MN tax return
New Jersey	Earns in-state wages less than the employee's personal exemption in a calendar year
New Mexico	Is in the state for 15 or fewer days in a calendar year
New York	Is in the state for 14 or fewer days in a calendar year
North Dakota	Is in the state for 20 or fewer days in a calendar year and is a resident of a state that provides similar protections for nonresidents (reciprocal exemption); certain occupations (e.g., professional athletes) not protected
Oklahoma	Earns in-state wages less than $300 in a calendar quarter
Oregon	Earns in-state wages less than the employee's standard deduction
South Carolina	Earns in-state wages less than $800 in a calendar year
Utah	*Employer* does business in the state for 60 of fewer days in a calendar year
Virginia	Earns in-state wages less than the employee's personal exemptions and standard deduction or, if elected by the employee, the employee's filing threshold
West Virginia	Earns in-state wages less than the employee's personal exemptions
Wisconsin	Earns in-state wages less than $1,500 in a calendar year

Proposed Legislation

The *Mobile Workforce State Income Tax Simplification Act of 2015* (H.R. 2315) provides for a uniform, fair and easily administered law and helps to ensure that the correct amount of tax is withheld and paid to the states without the undue burden that the current system places on employees and employers. Provisions include:

- Consistency with current law in which an employee's earnings are subject to full tax in his/her state of residence.

- An employee's earnings would be subject to tax in the state(s) within which the employee is present and performing employment duties for more than 30 days during the calendar year (safe harbor provision).

- A work day is assigned to a nonresident state (e.g., New York) when any part of the work day is in that nonresident state, but a single day may be assigned only to one nonresident state.

- Employees who perform employment duties in a nonresident state for more than 30 days during a calendar year are subject to income taxes and employers are required to withhold taxes in the nonresident state from the commencement of the employees' duties in the nonresident state.

- Certain uncommon types of employees, including professional athletes, professional entertainers, and some public figures are not covered by this bill and remain subject to state withholding laws.

APA in Action

- December 2015: Letter sent to Representative Bob Goodlatte (R-Va.), chairman of the U.S. House Judiciary Committee, regarding H.R. 2315. APA urged him "to release the House Judiciary Committee report for the bill and include the chairman's request to put the bill on the House suspension calendar."

- June 2015: Submitted comments to the House Judiciary Subcommittee on Regulatory Reform, Commercial and Antitrust Law for a hearing on HR 2315.

- APA is part of the Mobile Workforce Coalition, 280 organizations working to simplify nonresident state income tax rules -- MobileWorkforceCoalition.org – and has met with many Hill staffers.

Pay Stub Disclosure and Other Bills

- **Pay Stub Disclosure Act (H.R. 4376)**
  - Introduced on January 13, 2016 by Representative Robert Scott (D-Va.-3: Newport News Area), minority leader of the House Committee on Education and the Workforce.
  - Purpose: Fair Labor Standards Act does not require pay records be provided to employees and some employees are paid less than minimum wage and do not receive earned overtime pay. A federal law requiring that certain employees receive information about their pay can deter these employer behaviors.
  - Details:
    - ✓ Within 15 days of hire, employees would receive pay records on rate of pay and whether paid hourly, by shift, day, week, job, salary, piece rate, commission, or other. The employer's name, physical address, mailing address, and telephone number must be provided.
    - ✓ Each pay period, employees would receive pay records on total hours worked, total gross and net wages paid or salary, number of pieces and rate earned, commission rate, overtime hours and pay, bonuses and paid leave, contributions to health coverage and retirement, allowances and reimbursements, and other state or local law required records (family or medical leave, split shift pay).
    - ✓ Penalties for employers who fail to comply.
    - ✓ Department of Labor would issue regulations and approve existing state programs that match the federal requirements from 6 to 18 months after enactment of law.
  - APA in Action: APA's government relations staff met in January with the Committee Director of Labor Policy for the Democratic Party to discuss the bill. APA did not offer an official position, but learned more about the proposal and provided some general comments on APA's government relations mission and goals.

- **Democrats in Congress – Working Families Agenda --** H.R. 4376 is part of a larger plan to enact working families' legislation that includes:
  - Increasing the minimum wage (President Obama initiative)
    - ✓ Raise national minimum wage to $12/hour by 2020.
    - ✓ President Obama's initiative was for $10.10/hour over three years, which he implemented for federal contractors.
    - ✓ Would impact 28 million Americans.
    - ✓ 29 states have minimum wages higher than the federal.

- Paid time off (President Obama initiative)
  - ✓ 43 million workers do not have any sick leave.
  - ✓ In 2015, both parents work in 60% of families, up from 40% in 1965.
  - ✓ 60% of women with children under age 5 are employed, compared to 30% in the 1970s.
  - ✓ 67% of Americans want maternity leave, 55% paternity leave.
- Paycheck Fairness Act (President Obama initiative)
  - ✓ Many companies prohibit or discourage employees from discussing pay.
  - ✓ The National Labor Relations Act forbids pay secrecy, but the NLRA has no penalty.
  - ✓ Pay secrecy is a major contributor to pay discrimination in the workplace.
  - ✓ Paycheck Fairness Act would enact penalty mechanism in line with civil rights laws.
- Equal Pay (President Obama initiative)
  - ✓ Women as a group currently make 23% less than men for the same work.
  - ✓ Asian American women make 10% less than Caucasian men for the same work.
  - ✓ Caucasian women make 22% less than Caucasian men for the same work.
  - ✓ African American women earn 35% less than Caucasian men for the same work.
  - ✓ Hispanic/Latina women earn 44% less than Caucasian men for the same work.
  - ✓ Democrats believe that the Lily Ledbetter Fair Pay Act does not go far enough to protect workers. While fair pay legislation, in general, impacts human resources, there are effects on payroll to the extent that companies make adjustments to pay or establish pay rates for new hires.
    - NJ Senate bill 992 would close the pay gap between men and women. It advanced out of the state Senate Labor Committee on 2/4/16. The bill would create greater transparency surrounding compensation, greater protections for employees and prohibit unequal pay for "substantially similar" work, and would require an employer to demonstrate a different rate of compensation is the result of specific factors, such as training and education. It would restart the statute of limitations each time a paycheck is issued in furtherance of discrimination, reflecting language in the federal Lilly Ledbetter Act; however, it would allow back pay for the entire period of time in which the violation is continuous, a provision that is stronger than the federal law's two-year cap.
- Other Working Family Interests
  - ✓ Flexible, predictable, and stable schedules for workers.
  - ✓ Worker access to high-quality early learning opportunities and affordable child care.
  - ✓ Equal pay for equal work.
  - ✓ Pregnant workers right to reasonable accommodations when they need them to continue working safely during pregnancy.
  - ✓ Protections from discrimination based on sexual orientation and gender identity.

- **Republicans in Congress – No Formal Agenda –** Working to protect perceived business interests
  - Opposes minimum wage increase
  - Some support for paid maternity leave; no support for paid paternity leave
  - Would block DOL initiatives for retirement security (i.e., no restrictions on advice from financial advisors)
  - Does not want legislation that restricts business decision-making

Child Support and Other Garnishments

Child Support

With more than 50 percent of children in the United States living at least a part of their lives away from one or both of their parents, the importance of child support is significantly raised. According to the Center for American Progress, for custodial parents below the poverty line, child support can amount to as much as 52 percent of their income. Yet, child support is a balancing act between competing resource needs, the economic downturn made child support more difficult, and the family dynamic is changing.

Initially, the Office of Child Support Enforcement (OCSE) in the U.S. Department of Health and Human Services focused on state planning and early implementation strategies. Today, the agency is promoting a comprehensive family-centered approach that considers barriers to employment, changing roles of families, and methods to increase consistency in support payments. These programs include targeting services to a family rather than a one-size-fits-all approach, more thorough investigations and enforcement actions, and early intervention. Wage garnishments are an important component of these efforts and a focus of APA.

Networking with OCSE – Commenting on Child Support Program

- APA submitted comments concerning OCSE's Notice of Proposed Rulemaking (ACF-2014-0004-0001) on the Flexibility, Efficiency, and Modernization in Child Support Enforcement Programs. Recommendations include the following:

    - Collection and Disbursement of Support Payments by the IV-D Agency
        - ✓ Enforce the legal requirement that SDUs process both IV-D and non-IV-D payments.
        - ✓ SDUs should continue processing spousal support payments after their associated child support payments are released.

    - Guidelines for Setting Child Support Awards
        - ✓ Obligations should consider a parent's actual earnings and income rather than imputing the person's earnings and income.
        - ✓ No increase in Verification of Employment requests. States should rely on National Directories of New Hires, Financial Institution Data Match, and Multistate Financial Institution Data Match.

    - Procedures for Income Withholding
        - ✓ APA support changes to the Social Security Act that:
            - Require states to use the OMB-approved form, and
            - Explicitly state that non-IV-D payments be routed through the SDU.

- ✓ APA asks OCSE to create a document with standardized language that may be used to accompany an IWO being returned. This may serve to alleviate tensions when employers reject orders served in good faith.
- ✓ APA recommends that OCSE clarify to states and to employers that variations to the IWO are cause for rejection.

- Termination Notification
  - ✓ Employers may report employment terminations for IV-D cases through OCSE's e-IWO process or on the Child Support portal.
  - ✓ APA recommends that OCSE also process non-IV-D cases through the portal.
  - ✓ An employer that reports ALL termination information (IV-D and non-IV-D) through the e-IWO process or through the portal for participating states should be considered to have met the legal requirement for reporting this information to the respective states.
  - ✓
- Future Actions/Amendments to Withholding Orders
  - ✓ APA recommends that OCSE clarify that withholding orders are not to include instructions to be implemented in the future (e.g., step-down payments).
  - ✓ Changes to an order should be submitted as an amended order.
  - ✓ Failure to comply with withholding instructions to be implemented at a future date should be considered grounds for rejection.

- Effective Date
  - ✓ APA supports a general effective date of one year after publication for all states.

Verification of Employment

Dear Colleague Letter - DCL-16-01
DATE: February 5, 2016
TO: ALL STATE AND TRIBAL IV-D DIRECTORS
RE: Guidance about Third-Party Verification of Employment Providers

Dear Colleague:

In December 2015, Congress enacted the Fixing America's Surface Transportation FAST Act (P. L. 114-94). Section 80001 of the FAST Act, "Requests for Consumer Reports by State or Local Child Support Enforcement Agencies," amends section 604(a)(4) of the Fair Credit Reporting Act (FCRA).

A key provision of the new law eliminates a requirement that child support agencies notify the noncustodial parent at least 10 days prior to requesting information from a consumer reporting agency if determining the appropriate level of payments or enforcing a child support order, award, agreement, or judgment. State agencies were previously required to provide a notice, by certified or registered mail to the noncustodial parent's last known address, which advised the noncustodial parent that a report would be requested from a consumer reporting agency. Under this amendment to FCRA, child support agencies can send Verification of Employment (VOE) requests directly to third-party providers without first sending notice to the noncustodial parent.

Many employers contract with companies to respond to VOE requests from a variety of sources, including child support agencies. Several companies offering this service are considered consumer credit reporting agencies and, therefore, are subject to the FCRA. However, child support agencies always have the option to send VOE requests directly to the employer.[1]

This Dear Colleague Letter supersedes DCL-12-12, issued in September 2012, which clarified FCRA requirements that applied to third-party VOE requests in effect at that time. The new law eliminates barriers for child support agencies, employers, and third-party VOE providers to effectively and efficiently provide employment information needed to establish, modify, and enforce support orders. The revised FCRA language will improve child support agencies' ability to quickly verify a noncustodial parent's employment status and income, which will result in more child support for families.
If you have questions, please contact your OCSE Regional Office.

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[1] Section 466(c)(1)(C) of the Social Security Act mandates states to have laws in effect requiring employers to promptly respond to and provide information on the employment, compensation and benefits of an NCP, including VOE requests.

Same-Day Automated Clearing House

- ACH network processes 71M transactions daily
    - 31% of traffic is payroll
- Transition from *next-day* settlement to *multiple same-day* settlements
- Potential uses:
    - Same-day payroll
    - Expedited bill pay
    - Business-to-business payments
    - Account to account transfers
- *You* are not required to use same-day ACH
- RDFIs must
    - Accept same-day ACH files
    - Make funds available at end of day
- APA Trendline Survey on SDACH
    - 97%: will add value to organization
    - 86%: will add value beyond payroll
- SDACH will better support:
    - Direct deposit functions for
        - Hourly staff
        - Temporary staff
        - Termination pay
    - Contingency plans for missed deadlines
    - Payroll error corrections
    - Tax withholding remittances
    - Garnishment remittances
- Limitations:
    - No individual transactions over $25,000
    - No international ACH transactions (IATs)
- Phase-in approach
    - Phase 1 – eff. 9/23/2016
        - ACH credit transactions
        - 10:30 am transaction settles at 1:00 pm ET
        - 3:30 pm transaction settles at 5:00 pm ET
        - Useful for:
            - Payroll
            - Person-to-person payments
            - Same-day bill pay
    - Phase 2 – eff. 9/15/2017
        - ACH debit transactions
        - Useful for consumer bill payments:
            - Utilities
            - Mortgage
            - Credit card payments
    - Phase 3 – eff. 3/16/2018
        - ACH credits available at 5:00 pm RDFI local time

Other Garnishments

Federal Tax Levies

Electronic levy project

- Electronic delivery of levies –
  a. IRS is currently running a pilot in Texas, delivering the Form 668(A) to banks by fax.
  b. The pilot is limited to levies delivered by field agents.
  c. The pilot will eventually be expanded to include Forms 668(W) delivered to employers
- Electronic remittance of payments
  a. IRS is submitting a proposal to Treasury to update EFTPS in such a way that it will recognize levy payments remitted by employers on behalf of their employees.

State Commotion

- Georgia Lawsuit: In September and October 2015, members monitored a court case, *Strickland v. Alexander, et al*., finding that the state's garnishment law was unconstitutional. Employers received checks back from county clerks without instructions on whether to continue to withhold wages. A modified court decision found that wage garnishments were not part of the lawsuit and could continue unchanged.

  H.B. 255 was introduced in January to fix the constitutional issues raised in the Strickland case, including procedures, property that can be garnished, exemptions, definitions, etc.

- Tennessee Legislation: H.B. 1775 and S.B. 1969, as introduced in January, expands provisions authorizing the garnishment of earnings to include the earnings, commissions, and wages of independent contractors and similarly situated persons (Amends TCA Title 26, Chapter 2 and Title 29, Chapter 7):

  > To the extent of the amount due upon the judgment and costs, the employer garnishee shall hold, subject to the order of the court, any non-exempt earnings due or that subsequently become due. The judgment or balance due is a lien on earnings due at the time of the service of the execution. The lien shall continue as to subsequent earnings until the total amount due upon the judgment and costs is paid or satisfied, or until the expiration of the employer's payroll period immediately prior to six (6) calendar months after service of the execution, whichever occurs first. The lien on subsequent earnings shall terminate sooner if the relationship between the employer and employee is terminated or if the underlying judgment is vacated or modified.

Make a Difference Volunteer Form

Volunteers working with and for payroll and accounts payable professionals are what make everything happen at the American Payroll Association. We are always looking for members who want to get involved in their association and apply their knowledge and skills in new, exciting ways. The rewards of working on behalf of your profession and colleagues are countless!

If you would like to join any of these APA National Committees, Advisory Groups, or Task Forces please let us know. A great place to start is the Hotline Referral Service. This is one of the Association's most valuable membership benefits and will give you the opportunity to get in touch with fellow members while at the same time honing your professional knowledge.

If you are interested in joining a committee, advisory group, or task force, please complete this application and return to the APA. Thank you for your interest in serving your profession!

Please check your choice(s):

- ❏ APA Education Grant Committee
- ❏ Board of Contributing Writers
- ❏ Certification Board (Certified Payroll Professional Committee or Fundamental Payroll Certification Committee)
- ❏ Certification Item Development Task Force
- ❏ Certification Review Panel
- ❏ Chapter Recognition Committee
- ❏ CHAMPS (Chapters Helping APA-Chapters Make Payroll Shine) Committee
- ❏ Education Advisory Committee
- ❏ Electronic Payments Committee
- ❏ Finance and Audit Committee
- ❏ Government Relations Task Force
- ❏ Hotline Referral Service
- ❏ APA Representative to the IRS Advisory Council
- ❏ APA Representative to the IRS Electronic Tax Administration Advisory Committee
- ❏ APA Representative to the IRS Information Reporting Program Advisory Committee
- ❏ National Speakers Bureau
- ❏ Nominating and Elections Committee
- ❏ Shared Services Task Force
- ❏ Social Networking Committee
- ❏ Strategic Accounts Payable Leadership Task Force
- ❏ Strategic Payroll Leadership Task Force

Please print clearly to avoid delaying your application.

Name: ______________________________ APA ID # ______________

Title: ____

Company: ____

Address: ____

City/State/Zip: ____

Phone: ________________ Email: ____________________________

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