



Tax Issues & Updates

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Learning objectives



After this presentation you will have a better understanding of compliance issues related to:

- ▲ Hospitals – What's in the Air?
- ▲ Employee Issues/Reminders
- ▲ Alternative Investments and Added Reporting Requirements
- ▲ Cryptocurrency
- ▲ Political vs. Lobbying vs. Education



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Hospitals – What's in the Air?

Hospitals – What’s in the Air?

Ongoing Tax Exempt and Government Entities (TE/GE) Compliance Strategies

- ▲ 501(r) Compliance
 - CHNAs & FAPs continue to be a focus
 - BD issuing annual reminders to hospital clients around CHNA due dates
- ▲ Unrelated Business Income
- ▲ Employee/Independent Contractor Classification



Inflation Reduction Act



Signed into law August 16, 2021 by President Joe Biden

- Overall effect to non-profit organizations is minimal



Clean Energy Tax Credits

- Credits for qualified vehicles (generally electric)
- Credits for renewable energy sources (solar, fuel cells, wind, etc.)
- More IRS guidance is coming



15% Alternative Minimum Tax for corporations

- Applicable only if UBI is over \$1 billion...

Inflation Reduction Act

Direct Funding Opportunities

- ▲ The new law implements several environmental policy initiatives through direct funding rather than through tax deductions or credits.
- ▲ Not-for-profit organizations and state, local, and tribal governments are eligible to apply for these special programs.

Additional IRS Funding (\$79.6 billion)

- ▲ More enforcement coming (87,000 new agents)?
- ▲ Will someone answer my calls now?





Various Hospital Studies

Lown Institute Hospitals Index – June 2022

- ▲ Metrics:
 - Social Responsibility – evaluated across equity, value, and outcomes
 - Avoiding Overuse – refers to services that offer little to no clinical benefit or more likely to harm than help
 - Fair Share Spending – compares hospital spending on charity care and community investment
 - Racial Inclusivity – assessed the demographics of hospital Medicare patients served against community demographics.
- ▲ Only 66 out of 3,600 hospitals received straight A's in all categories
- ▲ Methodologies for measurement can be found on Lown's website:
<https://lownhospitalsindex.org/rankings/our-methodology/>



Various Hospital Studies

American Hospital Association Report – June 2022

- ▲ Analyzed Schedule H from Hospital Form 990s
- ▲ Findings:
 - Tax-exempt hospitals and health systems reported an average of 13.9% of their total annual expenses as community benefit expense for their tax years beginning in 2019.
 - Exempt hospitals and health systems reported an average of 6.4% of their total annual expenses as financial assistance, unreimbursed Medicaid, and other unreimbursed costs from other means-tested programs in their 2019 tax years.
 - For their 2019 tax years, 43% of responding exempt hospitals and health systems reported an estimated bad-debt expense attributable to financial assistance on their Schedule H submissions, averaging 0.3% of total expenses.
 - Similar to prior years, approximately three-quarters of participating exempt hospitals and health systems reported Medicare reimbursement shortfalls for their 2019 tax years.



Various Hospital Studies

EY QUEST Report (on behalf of AHA)

- ▲ Analyzes the federal revenue foregone due to the tax exemption of general tax-exempt hospitals for their tax years beginning in 2019.
- ▲ Focus on revenue foregone from the federal corporate income tax, the lower cost of tax-exempt bond financing, and the federal unemployment tax.
- ▲ Findings:
 - Federal revenue foregone due to the tax-exempt status of nonprofit general hospitals in their 2019 tax years was approximately \$12.4 billion.
 - The community benefit provided by these hospitals in their 2019 tax years was approximately \$110.9 billion, nearly nine times more than the federal revenue foregone in their 2019 tax years.
 - Approximately \$51.1 billion of community benefits provided by these hospitals in their 2019 tax years came from financial assistance, unreimbursed Medicaid, and other unreimbursed costs from means-tested government programs.



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Employee Issues/Reminders

Polling question #1



Hiring Employees to Work in Another State

Factors to consider may include:

- 1 Recruitment, morale, retention
- 2 Is attracting the best talent worth the burden of compliance?
- 3 Roles and responsibilities of employees, such as soliciting contributions
- 4 Permanent vs. temporary

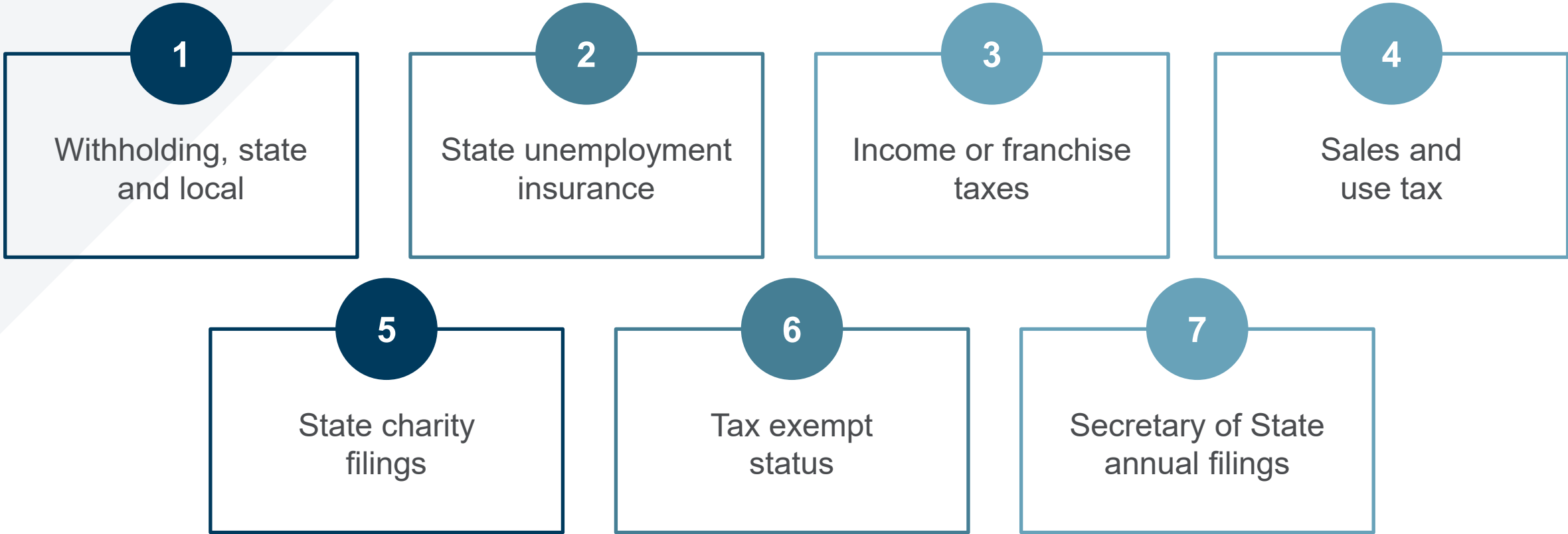


Remote Employees

- ▲ Usually withholding depends on location of where the work is performed, rather than where the employer is located
- ▲ Variations:
 - Threshold requirements
 - Day count
 - Income
 - Convenience of the employer
 - Reciprocity
 - Residency in more than one state

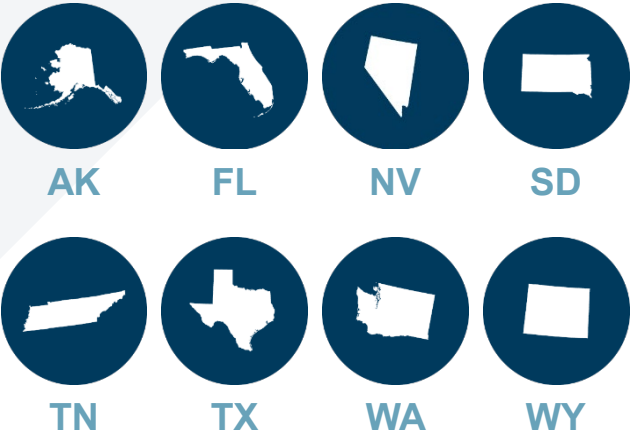


Remote Employees Could Create Nexus and Require:



Remote Employees

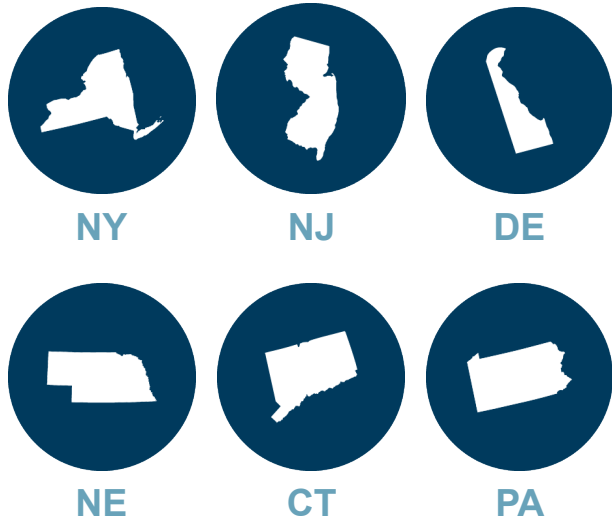
States with no income tax



Taxes only interest and dividends



States that base tax on where employer is located



Mobile Workforce State Income Tax Simplification Act of 2021 not yet passed—tax in state of employee’s residence and where employee is present and performing duties for more than 30 days



Other Issues Requiring Attention for Remote Employees in Another State

- ▲ Minimum wage and overtime pay, meal breaks
- ▲ Paid family leave and paid sick leave
- ▲ Disability benefits
- ▲ Workers' compensation
- ▲ Healthcare plans and other benefits coverage
- ▲ Antidiscrimination laws and equal pay
- ▲ OSHA reporting

May depend on number of days employee works in the state

Best Practice:

Create a Policy

- ▲ Identify and compile the various state/local employment and tax law rules
- ▲ Quantify the potential financial and administrative costs
- ▲ Evaluate: does attracting the best and brightest, regardless of location, outweigh the additional tax, administrative cost, and risk of tax assessment (including interest and penalties) for failing to properly comply?



Best Practice:

Create a Policy

Craft and communicate a policy

(including employee certification of work location, change) so that all employees are treated fairly and relevant employment laws are properly followed.



Moving and Relocation Expenses

- ▲ The TCJA effectively made all moving and relocation expenses (travel, lodging, house hunting expenses, etc.) taxable income to the recipient if paid by the employer.
 - Effective until 2025 when law “sunsets” unless extended.
 - Individuals may not deduct these expenses either, but of course must report the income.
- ▲ Independent Contractors
 - Similar expenses may be treated as expense reimbursements to independent contractors.
 - Must have a written contract that details treatment of such expenses and reimbursement procedures (provide a receipt, etc.) according to the accountable plan rules.
 - May need to be disclosed on the 990 if income thresholds met or if a BOD member.



Travel Expenses

- ▲ Expenses incurred traveling between your residence and your main place of business (“tax home”) are considered commuting expenses and are taxable income if reimbursed.
 - Establishment of tax home essential – see IRS Pub. 463
 - Failure to correctly identify taxable income items can lead to big problems like excess benefit transactions
- ▲ Expenses incurred traveling between your residence and a temporary worksite other than your tax home can be reimbursed and are not considered taxable income if reimbursed.
 - Subject to accountable plan rules (providing receipts, expense report, etc.)





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Alternative Investments and Added Reporting Requirements

Polling question #2



Alternative Investments

- ▲ Investments outside of standard assets such as traditional stock and bonds
- ▲ Diversify portfolios and offer potential for higher rates of return
- ▲ Typically organized as corporations and partnerships; many are foreign in locales such as Cayman Islands with favorable tax laws
- ▲ Probable complex reporting requirements:
 - U.S.-based
 - Foreign-based
- ▲ READ the fine print in the offering documents very carefully, ask questions before making the investment



Alternative Investments

U.S.-Based



- ▲ UBI probable – inquire before making investment
- ▲ Multiple state filings if UBI
- ▲ Net Operating Losses (NOLs) – cannot use in future if no filing done in year generated, offset only this activity
- ▲ Cost/benefit analysis must be done, determine appetite for risk
- ▲ Additional expense for tax filings must be considered when considering initial purchase; what is ROR after this expense?



Alternative Investments

Foreign-Based



- ▲ Foreign reporting required, severe penalties if overlooked
 - **Form 990, Schedule F** – foreign investments exceed \$100,000
 - **Form 926** – invest \$100,000 or more in 12-month period into corporation
 - **Form 8865** – invest \$100,000 or more in 12-month period into partnership
 - **Form 5471** – required if own 10% or more of foreign corporation
 - **Form 3520** – ownership in foreign trust
 - **FinCEN Form 114** – report of foreign bank and financial accounts
 - **Penalty** \$10,000 or more for each missed form
- ▲ Additional expense for tax filings must be considered when considering initial purchase; what is ROR after this expense?





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Cryptocurrency

Polling question #3





Cryptocurrency

- ▲ Digital asset with no physical form (Bitcoin, Ethereum)
- ▲ Not issued by a central bank
- ▲ Held in a digital wallet, local and web-based versions, require password
- ▲ Regulations are minimal to date though anticipated soon
- ▲ Value based on supply and demand, volatile
- ▲ Has its own trading platforms (i.e., Crypto.com)

Cryptocurrency vs Nonfungible Tokens (NFTs)

- ▲ Cryptocurrency – type of virtual currency that uses cryptography to secure transactions that are digitally recorded on a distributed ledger (blockchain)
- ▲ NFT – unique digital assets that take various forms (artwork, music, in-game items)
- ▲ NFT – Purpose and function distinct from a “currency”
- ▲ If using cryptocurrency to buy NFTs, gain/loss on the cryptocurrency is recognized on the NFT purchase (Gain/loss = FMV of NFT less basis of cryptocurrency)



Can EOs accept as a donation?

- ▲ Yes – IRS considers cryptocurrency to be **noncash property**
- ▲ Internal controls must be in place to help ensure security
- ▲ Review and update gift acceptance policy:
 - Willing to accept cryptocurrency?
 - Intend to hold or sell upon acceptance?
- ▲ Back-end support available (i.e., The Giving Block)
- ▲ Some EOs resisting cryptocurrency as it is seen as predatory and believed to be contributing to global warming





Gift Acknowledgement

- ▲ Required for donations valued at \$250 or more
- ▲ Noncash property = description only, no value on acknowledgement
- ▲ Form 8283 – EO signs Part V if value > \$5,000
- ▲ Form 8283 – donor may need appraisal
- ▲ Form 8282 – if sold within 3 years

Recording Cryptocurrency

- ▲ Books – balance sheet = intangible asset
- ▲ Form 990 – noncash contribution revenue:
 - Schedule B
 - Schedule M
- ▲ Generates capitals gains/losses when sold





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Political vs. Lobbying vs. Education

Education vs. Lobbying vs. Political Activities

What is considered education?

- ▲ **Education = Advocacy**
- ▲ Stakeholders can make their voices heard through education, as long as it doesn't take a specific position.
- ▲ Examples:
 - Telling members of Congress how grants helped constituents.
 - Inviting members of Congress to visit your organization.
- ▲ If you attempt to influence legislation, you have crossed into lobbying.



Education vs. Lobbying vs. Political Activities

What is considered lobbying?

- ▲ **Lobbying = Legislation**
- ▲ Two types:
 - Direct Lobbying Communication: Direct communication with legislative member, refers to specific legislation, and reflects a view on that legislation
 - Grassroots Lobbying: Attempt to influence legislation by affecting the opinions of the general public
 - Must include a call to action from the public
- ▲ Refer to specific legislation, and express a position on that legislation



Education vs. Lobbying vs. Political Activities

What are political activities?

- ▲ **Political Activities = People**
- ▲ Political activities are actions that support or oppose any candidate for an elected office.
 - Attempts to influence elections.
 - Applies to any federal, state, or local election.



501(c)(3) vs. 501(c)(4) vs. 527

501(c)(3)

Charitable

Donations are tax deductible

501(c)(4)

Social welfare

Donations are NOT tax deductible

527

Political Action Committee

Supporting or opposing candidates for political offices – donations are NOT tax deductible



501(c)(3) vs. 501(c)(4) vs. 527

Who can do what?

Education is acceptable for all organizations!

501(c)(3)

- ▲ Lobbying is allowed as long it is not “substantial.”
- ▲ Substantial Test: Time and expenditures. Be careful.
- ▲ Section 501(h) election: quantifies “substantial”
 - 20% of first \$500,000 of budget
 - 15% of the next \$500,000 up to \$1 million
- ▲ Political activities strictly forbidden by 501(c)(3).

501(c)(4)

- ▲ Unlimited lobbying as long as the issues relate to the exempt purpose.
 - Limited political activities (cannot be the primary activities)

527 Organizations

- ▲ Unlimited support of politicians.
- ▲ 501(c)(3) cannot make contributions to these organizations. 501(c)(4) organizations must file Form 1120 POL if they make a contribution.



Questions?

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