



The State of New York views withholding tax audits as a substantial revenue raiser, which is why the number of audits continues to increase every year. These audits involve complex and lengthy processes, including the review of an expansive list of documents focused on the most common areas of noncompliance.

Common Areas of Noncompliance

New York State's withholding tax rules are complex and often incorrectly applied by employers. The following is a list of common areas where employers may be noncompliant. These are often a specific focus of review during New York State withholding tax audits.

- Withholding on nonresidents' New York sourced wages pursuant to the 14-day rule
- Withholding on New York sourced deferred compensation, such as stock options
- Withholding on New York based employees working remotely under the convenience of the employer rule
- Withholding on New York City and Yonkers residents
- Paying the Metropolitan Commuter Transportation Mobility Tax (MCTMT)
- Documenting withholding on Form IT.2104 (resident) or Form IT.2104.1 (nonresident)

Why Should Employers Be Concerned About New York State Withholding Tax Audits?

Employers should be concerned because the unpaid taxes, penalties, and interest can be severe due to the breadth, depth, and frequency of New York State withholding tax audits. Below is a list of additional important facts employers should know about these audits.

- All organizations with business activities (e.g., employees or nonresident employees visiting New York for business purposes) in New York are subject to income tax withholding audits
- Organizations can be audited every three to four years. The audit process includes extensive document production requests, including for payroll and HRIS records, deferred compensation plans, as well as business expense information to identify areas of noncompliance
- An audit can last from six months to a few years
- New York State has not issued any income tax withholding relief in response to COVID-19, potentially resulting in an increased risk of noncompliance due to work from home arrangements

Best Practices

There are many New York specific rules and regulations to consider in positioning your organization to best defend against an audit. Organizations may want to consider the below practices:

- Reviewing the documents and records most commonly requested during an audit to identify gaps in compliance and enable informed decision making to mitigate exposure
- Reviewing payroll practices to enable the proactive implementation of processes to address common areas of noncompliance

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