

The Nation's Leader in Payroll Education



An APA Lobbying Update 2018 New York Metro NPW Celebration/Full Day Seminar



Agenda



- ◆ **Tax Cuts and Jobs Act**
- ◆ **E-Filing Aggregation**
- ◆ **IRS Tax Administration**
- ◆ **Health Care Proposals**



Agenda



- ◆ **SSA 'No-Match' Notices**
- ◆ **Payroll Cards**
- ◆ **Mobile Workforce Bill**
- ◆ **Child Support – Lump Sums**



APA's Mission



- ◆ **Representing payroll professionals before federal, state, and local governments.**
- ◆ **Educating government and community decision-makers about the payroll industry.**
- ◆ **Minimizing the burden on payroll**





APA's Mission

- ◆ **APA uses leverage**
- ◆ **Total IRS collections
FY 2017 - \$3.42T**
 - **Through payroll –
\$2.39T (70%)**
- ◆ **Child support
collections FY 2017 -
\$32.4B**
 - **From employers –
\$24.4B (75%)**



"A tax loophole is something that benefits the other guy. If it benefits you, it's tax reform."

Russell B. Long

Senator from Louisiana 1948-1987



Tax Cuts and Jobs Act



- ◆ **Nearly doubles standard deduction to \$12K (S or MFS), \$18K (HOH), \$24 (MFJ)**
- ◆ **Doubles child tax credit to \$2K**
- ◆ **Adds nonchild dependent tax credit - \$500**
- ◆ **Limits SALT to \$10K**
- ◆ **Limits interest deduction for high-end mortgages**
- ◆ **Changes COLAs to Chained CPI-U**
- ◆ **Clarifies 'tangible personal property'**

Tax Cuts and Jobs Act



- ◆ **Eliminates personal exemptions**
- ◆ **Makes moving expense reimbursements taxable other than military moves**
- ◆ **Eliminates bicycle commuting reimbursement as a QTF**
- ◆ **Employer can't deduct cost of QTFs**
- ◆ **Some employer F&B deductions limited**
- ◆ **Adds family and medical leave employer tax credit for paid leave**

Tax Cuts and Jobs Act



IRS Implementation

- ◆ **140 integrated software systems at IRS**
- ◆ **465 forms and guidance documents**
- ◆ **Tax administration and funding >\$320M**
- ◆ **Tax Reform Implementation Office (TRIO)**

Tax Cuts and Jobs Act



APA's TCJA Efforts

- ◆ **Letter to Congressional Conference Committee warning of consequences**
- ◆ **Letter to IRS requesting:**
 - Transitional relief
 - Time to implement new withholding tables
 - Guidance on need for new W-4 for all EEs
 - Certainty on supplemental withholding rate

Tax Cuts and Jobs Act



◆ **Benefits spared from the chopping block before TCJA was passed**

- Adoption assistance programs
- Dependent care assistance programs
- Educational assistance plans
- Employee achievement awards
- Employer-provided housing and meals

Tax Cuts and Jobs Act



TCJA Effects on Payroll

- ◆ **2018 withholding tables out Jan. 11, need to be in effect by Feb. 15**
- ◆ **Optional supplemental w/h rate – 22%**
- ◆ **Some inflation adjustments recalculated for 2018**
 - ◆ HSA contribution max from \$6,900 to \$6,850
 - ◆ FEI exclusion from \$104,100 to \$103,900

Tax Cuts and Jobs Act



TCJA Effects on Payroll

◆ Form W-4 for 2018

- Not released until Feb. 28
- Exempt claim renewal extended to Feb. 28, can use 2017 W-4
- Adds allowances for higher child tax credit, new nonchild dependent credit
- Allowances for employee, not spouse and kids

Tax Cuts and Jobs Act



TCJA Effects on Payroll

◆ Form W-4 for 2018

◆ Tell employees to check w/h if:

- 2-income families
- 2 or more jobs
- With itemized deductions
- High income and complex tax returns

Tax Cuts and Jobs Act



TCJA Effects on Payroll

◆ Form W-4 for 2018 – APA's role

- Roundtable discussions with IRS in January
- Don't make drastic changes for this year
- Need a quick turn-around
- Refigure allowance formula for child credits
- Configure allowance formula for new credit

◆ Make sure draft of 2019 W-4 is out early

Tax Cuts and Jobs Act



TCJA Effects on Payroll

◆ Early release draft 2019 Form W-4 June 8

- Major changes in how withholding is addressed
- EE gets 2 or 3 allowances based on filing status – 2 if S or MFS; 3 if HOH or MFJ
- Adjustments are added to or subtracted from taxable wages before w/h is calculated for:
 - Other income not withheld on – interest, self-employment
 - Income from other jobs and/or spouse's job
 - Itemized deductions above standard deduction

Tax Cuts and Jobs Act



TCJA Effects on Payroll

◆ Early release draft 2019 Form W-4 June 8

- Adjustments made after w/h is calculated
 - Subtract tax credits – child tax credit, new nonchild dependent tax credit
 - Subtract amounts w/h from other jobs, spouse's job
 - Add extra withholding requested by EE

◆ IRS will not require all EEs to complete and submit a 2019 W-4; prior forms submitted before 1/1/19 can be used

Tax Cuts and Jobs Act



TCJA Effects on Payroll

◆ How does ER figure w/h using 2019 W-4?

- Step 1: Divide amounts in Lines 5-8 by pay period frequency
- Step 2: Add amounts from Lines 5 & 8 to EE's taxable wages
- Step 3: Subtract amount from Line 6 (itemized deductions)
- Step 4: Calculate FITW using allowances – 2 (S); 3 (HOH or MFJ)
- Step 5: Reduce FITW by amount from Line 7 (tax credits)
- Step 6: Separately calculate FITW on amount from Line 8
- Step 7: Subtract amount from Step 6 from Step 5 result
- Step 8: Add any extra withholding amount from Line 9 to get final FITW for EE

Tax Cuts and Jobs Act



TCJA Effects on Payroll

◆ **Early release draft 2019 Form W-4 June 8**

◆ **APA comments in early July:**

- EEs may be reluctant to supply personal/family income information and other jobs
- IRS recommends EEs use w/h calculator; APA offers line-by-line critique of calculator
- APA offers recommendations to make instructions clearer for EEs and ERs

Tax Cuts and Jobs Act



TCJA Effects on Payroll

◆ Early release draft 2019 Form W-4 June 8

◆ APA comments in early July:

- New hires with no W-4 by first payroll – draft says treat as single with “no adjustments”; does that mean 2 allowances?
- Instructions don’t differentiate between income from jobs and self-employment

◆ IRS promised to release:

- Final draft by late Aug. (Ha!)
- Final form in November

◆ But will they delay for another year???

Tax Cuts and Jobs Act



TCJA Effects on Payroll

- ◆ **Paycheck check-up campaign**
- ◆ **IRS encouraging taxpayers to review their withholding**
- ◆ **APA's efforts:**
 - Worked with IRS on messaging
 - Offered recommendations on IRS withholding calculator

Tax Cuts and Jobs Act



Transition Relief

◆ Health Savings Accounts

- Family plan contribution max for 2018 reduced from \$6,900 to \$6,850
- Some EEs had already contributed the max

◆ APA requests relief

◆ April 26: IRS grants relief, restores \$6,900 max, adds procedures for ERs

Tax Cuts and Jobs Act

◆ Personal exemptions & tax levies

- Exempt amount uses personal exemptions
- Exemption amount is zero under TCJA
- TCJA adjusts exempt amount calculation



Tax Cuts and Jobs Act

◆ Personal exemptions & tax levies

- If Form 668-W Part 3 not submitted
 - TCJA says use married filing separately, no dependents
 - Before TCJA married filing separately, 1 exemption





Tax Cuts and Jobs Act

◆ Levy exempt amount tables (Pub. 1494) issued 12/31/17

- Did not account for new standard deduction
- Did not have columns for zero dependents

◆ Revised Pub. 1494 issued 5/2/18

- Added TCJA changes, but has several math errors/typos
- APA pointed them out to IRS

◆ Newly revised Pub. 1494 issued 9/12/18

- Fixed all but one error – \$171.11 s/b \$117.11 – HOH, Daily PR Period, 3 Dependents; no new table to be issued



Tax Cuts and Jobs Act

◆ New levy Form 668-W used since April 2018

◆ New Notice 1439

- Explains levy process for employers and employees
- Contains sample of Statement of Dependents and Filing Status from Part 3 of Form 668-W
- Sample can be used by employee to change number of dependents or get employer to use most current Pub. 1494

Tax Cuts and Jobs Act



◆ **What about Tax Reform 2.0? – H.R. 6760: Protecting Family and Small Business Tax Cuts Act of 2018 (approved by W&M 9/13)**

- Would make permanent:
 - New tax rates and brackets
 - Standard deduction increase
 - Child tax credit increase
 - SALT deduction cap at \$10,000

Tax Cuts and Jobs Act



◆ **What about Tax Reform 2.0? – H.R. 6760: Protecting Family and Small Business Tax Cuts Act of 2018 (approved by W&M 9/13)**

- Would make permanent:
 - Taxability of moving expense reimbursements
 - Elimination of bicycle commuting benefit
 - Reduction of personal exemption amount to zero
 - Elimination of miscellaneous itemized deductions

TCJA & State Income Tax

◆ State definitions

- Taxable income
- Exemptions
- Deductions



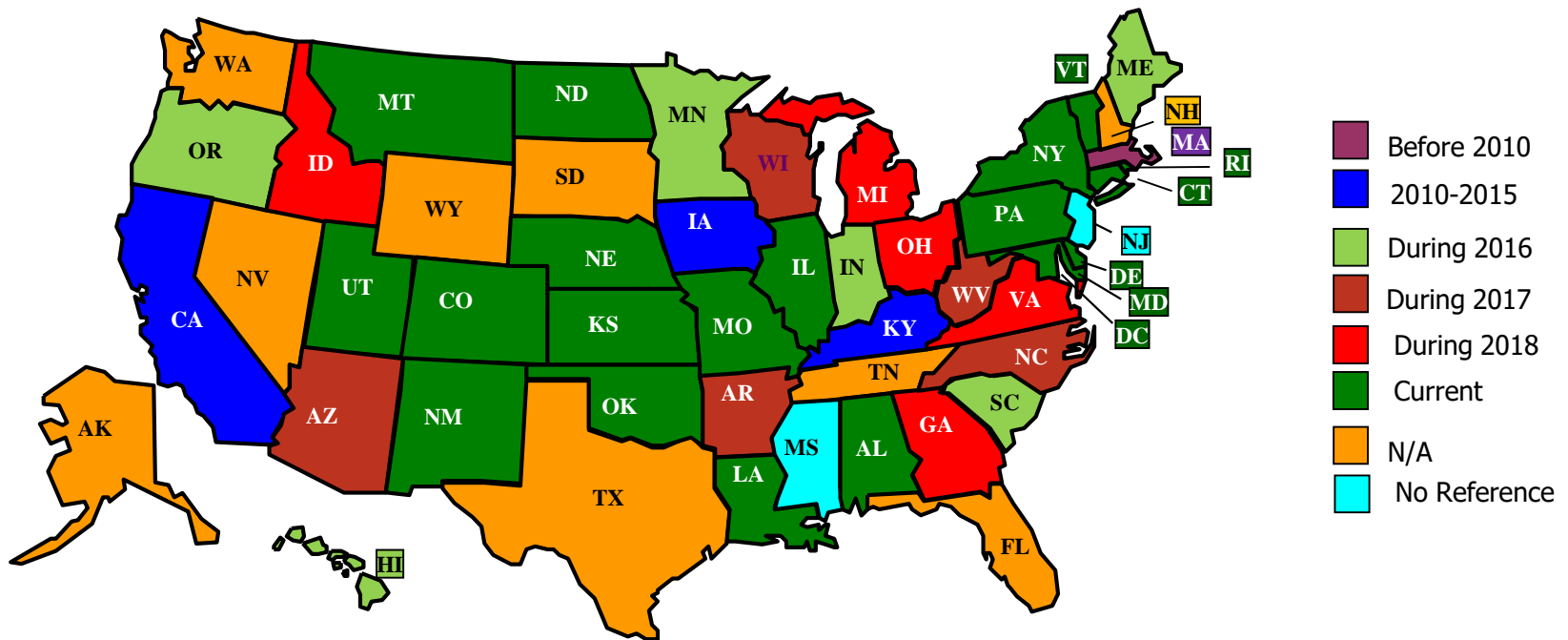
TCJA & State Income Tax



◆ States conforming to federal tax law

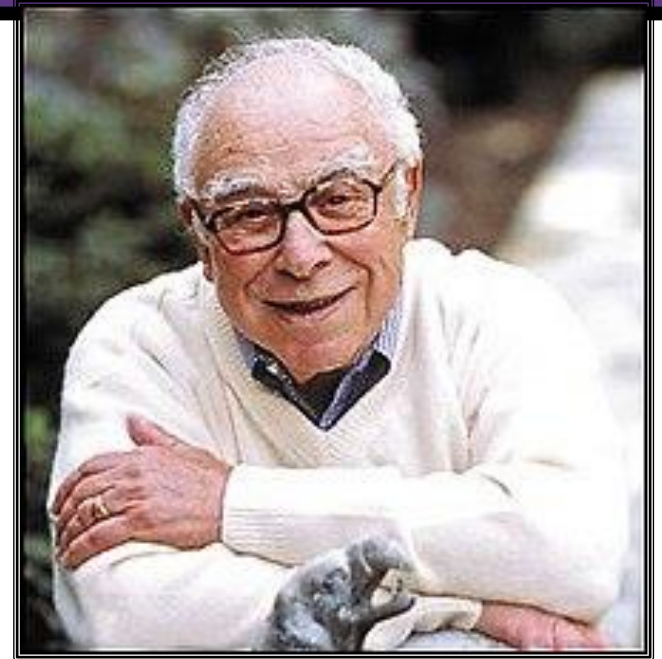
- Before 1/1/18 – does not include TCJA
- On 1/1/18 or later – includes TCJA

States Following IRC on Specific Dates



"Tax reform is taking the taxes off things that have been taxed in the past and putting taxes on things that haven't been taxed before."

Art Buchwald
Columnist and humorist



E-Filing Aggregation



- ◆ **IRS proposes basing e-filing requirement on ≥ 250 total information returns, not on each type of return**
 - Add up W-2s, 1095-Cs, 1099-MISC, 1099-R, 1042-S, etc. – e-filing required if ≥ 250
 - If ER must use e-file, all corrected returns must be e-filed, no matter how many
 - Proposed to be effective for 2018 information returns filed in 2019, including corrections

E-Filing Aggregation



◆ APA comments

- Pointed out that this will expand requirement to new departments inside companies
- Could require outsourcing or new systems
- Increased outreach needed, both in the media and to paper filers who may meet threshold
- Delay finalizing until 2019 forms filed in 2020
- IRS needs 1099 direct free-file system like SSA
- Improve authentication process and “help”

IRS Tax Administration



◆ **H.R. 5444, Consolidated IRS reform legislation, passed the House on 4/19/18**

- Modifies titles of several IRS officials
- Eliminates IRS Oversight Board
- Requires IRS to submit a reorganization plan
- Requires IRS to submit customer service strategy

IRS Tax Administration



- ◆ **H.R. 5444, Consolidated IRS reform legislation, passed the House on 4/19/18**
 - Creates independent Office of Appeals
 - Revises enforcement procedures:
 - Referrals to private debt collectors
 - Contacting third parties

IRS Tax Administration



◆ **APA recommendations:**

- Agencywide technology plan
- Lower threshold for electronic filing
- One point of contact – identity theft victims
- Internet platform for Forms 1099



IRS Tax Administration



◆ **APA recommendations:**

- Uniform standard for electronic signatures
- Enhance online accounts and portals
- Funding for TCJA changes

(Budget: IRS requested \$397M, received \$320M)

Health Care Proposals



◆ Health Savings Account (HSA) Expansion

- H.R. 6311 would allow Medicare eligible seniors to contribute to HSAs and increase FSA balance carryforward amount – passed House 7/25/18
- H.R. 6305 would allow HSA contributions if spouse has health FSA
- H.R. 6306 would increase contribution maximums, allow both spouses to contribute to same HSA if both have family coverage under an HDHP, and make distributions nontaxable during 60-day period after HDHP coverage if HSA is established in that time

Health Care Proposals



◆ Affordable Care Act changes

- H.R. 6199 would allow payments for OTC drugs from HSAs, MSAs, health FSAs, and HRAs – passed the House 7/25/18
- H.R. 4616 would delay employer health insurance mandate retroactively from 2015 to 2019
- H.R. 6312 would expand medical care definition to include costs of certain physical fitness activities
- S. 2802 would increase FSA pre-tax contribution limit to \$5,000 plus \$500 for each dependent over 2 and allow unlimited balance to be carried over

SSA 'No-Match' Notices



◆ SSA starting to send out Form W-2 name/SSN “no-match” notices again

- Official name is Educational Correspondence (EDCOR) notices or Employer Correction Request Notices
- Summer 2018 –first notices since 2007
 - Initial notices to ERs with ≥ 1 mismatch on 2017 W-2s
 - PSP will get notice if any client has 2017 mismatches
 - Notices will not have number of mismatches or EE info
 - Provide information about SSA’s services and W-2 filing tips
 - Notices will ask for corrections before 2018 W-2 filing

SSA 'No-Match' Notices



◆ SSA starting to send out Form W-2 name/SSN “no-match” notices again

- Summer 2018

- Sample PSP notice at <https://www.ssa.gov/employer/notices/ThirdPartyLetter.pdf>
- Sample employer notice at <https://www.ssa.gov/employer/notices/EDCOR.pdf>

SSA 'No-Match' Notices



◆ SSA starting to send out Form W-2 name/SSN “no-match” notices again

- Spring 2019
 - Correction request notices sent to ERs that timely e-filed but had ≥ 1 name/SSN mismatch
 - Sample correction request notice at <https://www.ssa.gov/employer/notices/EmployerCorrectionRequest.pdf>
- September 2019
 - Correction request notices sent to ERs that filed W-2s late or on paper that had ≥ 1 name/SSN mismatch

SSA 'No-Match' Notices



◆ SSA starting to send out Form W-2 name/SSN “no-match” notices again

- 2019 notices (only to ER, not EE or PSP)
 - Will say corrections are needed to allocate EE's earnings
 - Notice does not address EE's work authorization or immigration status
 - Tell ER not to take adverse action based on mismatch
 - Tell ER how many mismatches
 - Tell ER to use 'Employer Report Status' within Business Services Online to view mismatched names and SSNs
 - Tell ER to send SSA corrections on W-2c within 60 days



Payroll Cards

◆ **APA's white paper – "Regulation of Payroll Card Accounts: A Guide for Policymakers"**

- Find it on APA's Visa Payroll Card Portal on the APA website at <http://paycard.americanpayroll.org/> in the Paycard News section
- Contains model language for lawmakers to use in sensible paycard legislation
- Comprehensive source of information on paycards provided by GRTF's Paycards Subcommittee



Payroll Cards

◆ Kentucky

- Legal tender includes direct deposit and payroll cards
- Signed into law in March 2017

◆ Massachusetts (S. 2447) in Senate W&M committee

- Unnecessary rules for payroll card use (like NY)
- Free banking services for payroll card users only
- 7-day cooling off period
- APA comments unfavorable



Payroll Cards

◆ Massachusetts (H.R. 4218) in House W&M Committee

- Full and free access to wages
- Comply with Regulation E
- Disclose fees to employees
- Free access to account information
- APA comments positive

Payroll Cards



◆ New Hampshire (S.B. 84)

- Original bill supported by APA
- Amendments remove payroll card provisions, only covers WC payments by direct deposit
- House record and misperceptions
- APA comments



Payroll Cards

◆ New York – OMG!

- Final DOL regs very restrictive; APA commented twice, met with DOL
- In Global Cash Card case, Industrial Board of Appeals said DOL overstepped its authority
- State Supreme Court said IBA acted arbitrarily by vacating all wage payment regs
- ADP filed notice of appeal on July 6
- Regs not being enforced at this point

Payroll Cards

◆ New York – OMG!

- While this is going on, bills introduced in Senate and Assembly – S5208A/A6771A
 - Payroll cards are an option for paying wages
 - One free withdrawal per day up to full wages at in-network ATM
 - Free checking account balances



Payroll Cards

◆ New York – OMG!

- While this is going on, bills introduced in Senate and Assembly – S5208A/A6771A
 - One free replacement card per year
 - Notices in language normally used by employer
 - Wages must be insured
 - No compensation for employers from issuer





Payroll Cards

◆ New York – OMG!

- While this is going on, bills introduced in Senate and Assembly – A243
- Advanced written consent of employee
- Written consent not condition of employment
- Deposit by employer same as if deposit by employee
- Free withdrawal of full wages once per pay period
- Employee can change mind on wage payment options

Mobile Workforce Bill (HR 2315)



- ◆ **30-day safe harbor from nonresident taxation**
- ◆ **Retroactive to day 1**
- ◆ **Athletes & public figures not protected**
- ◆ **Preserves reciprocity**
- ◆ **Approved by House, now in Senate**



Mobile Workforce Bill (HR 2315)



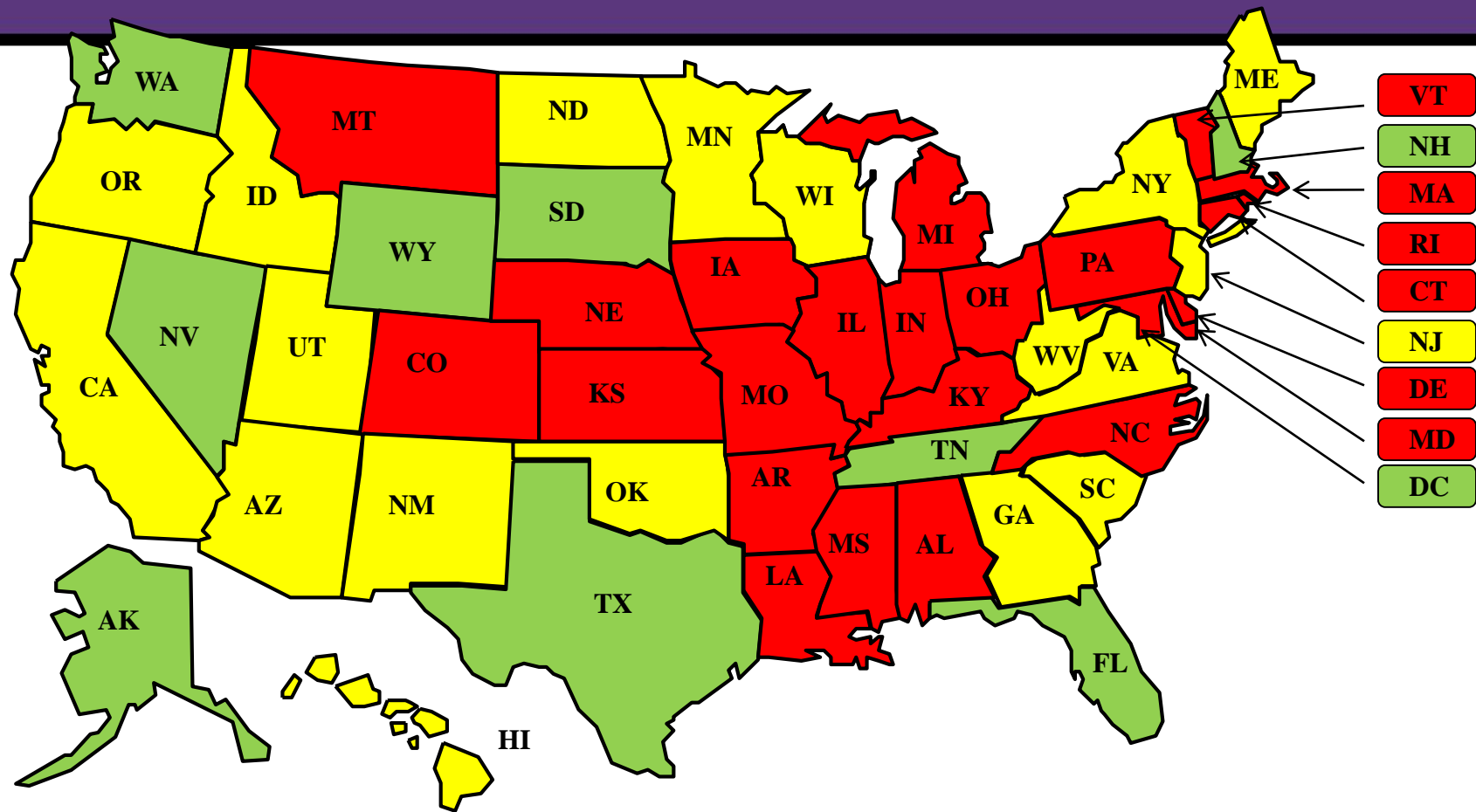
◆ **APA provided comments to House subcommittee earlier**




- Most companies don't comply with nonresident rules because of complexity
- Lack of resources – software, time, money
- Others ignorant of obligations

◆ **Overall, states will collect only 0.01% less**

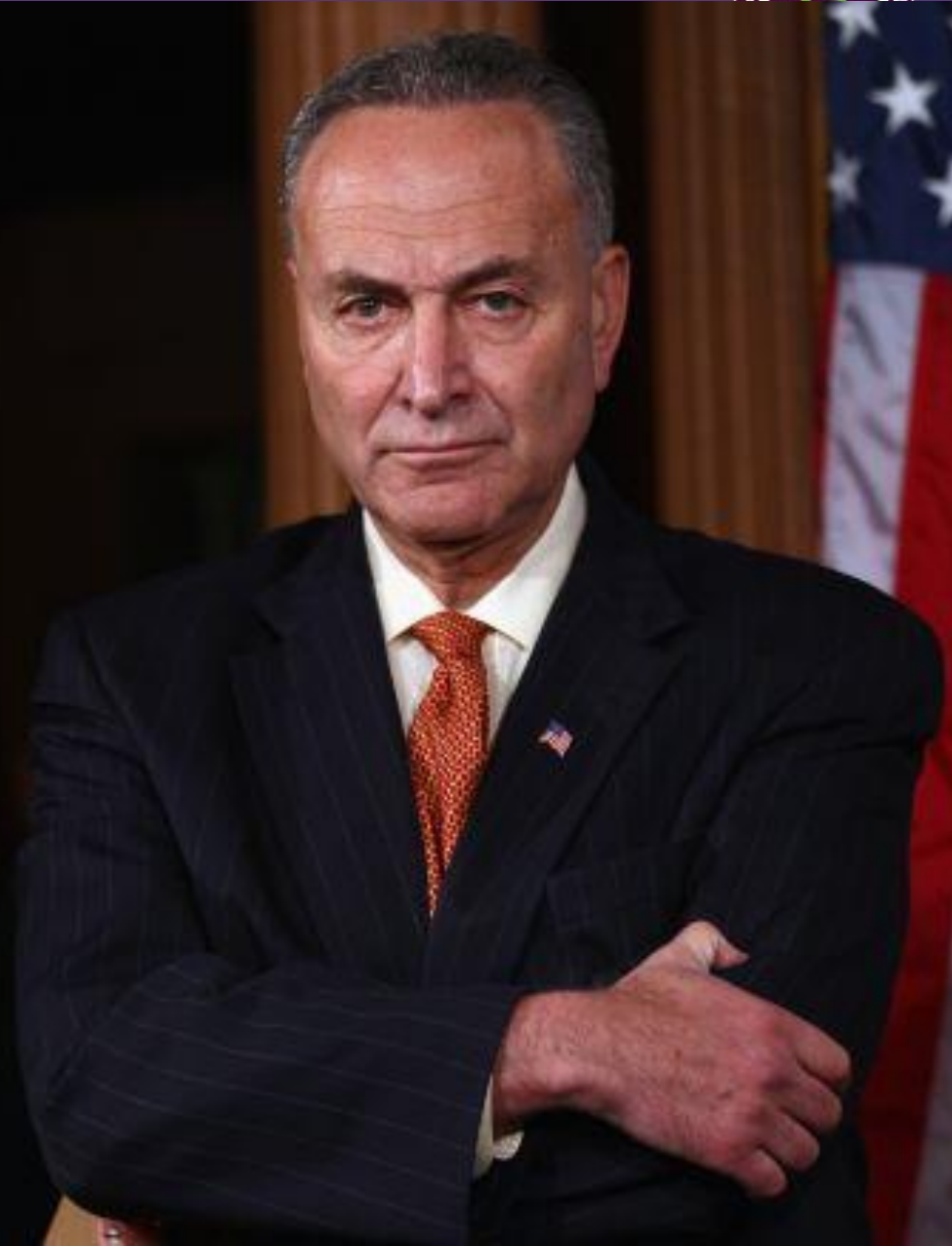
◆ **NY would lose the most (\$44.5M or more)**

Mobile Workforce Bill (HR 2315)



 Nonresident employees subject to tax withholding on *first day* of travel
 Nonresident employees subject to withholding after reaching threshold
 No general personal income tax (or, in the case of DC, no tax on nonresidents)

Sen. Charles Schumer (D-NY)



Mobile Workforce Bill (HR 2315)



- ◆ **Write a letter to your U.S. senators**
- ◆ **www.mobileworkforcecoalition.org/contact-congress/#/**
- ◆ **Click “Take Action” button**
- ◆ **Follow steps**
- ◆ **Click “Send”**



Child Support – Lump Sums



◆ Defining the problem

- Consumer Credit Protection Act
- Definition of earnings
- Garnishment limits
- Burden on payroll



Child Support – Lump Sums



DOL Fact Sheet #30:

**"Earnings may include payments
received in lump sum."**



Child Support – Lump Sums



◆ DOL opinion letter to APA in April 2018

◆ 3 pronged determination:

- Lump-sum payments fully covered
- Lump-sum payments partially covered
- Lump-sum payments not covered



Child Support – Lump Sums



◆ Lump sums fully covered

- Discretionary and nondiscretionary bonuses
- Commissions
- Performance bonuses
- Merit increases
- Safety awards
- Signing bonuses
- Relocation incentive payments
- Termination and severance pay
- Holiday pay

Child Support – Lump Sums



◆ **Lump sums partially covered**

- Workers' comp payments for wage replacement, not medical expenses
- Insurance settlements for back or front pay, not for compensatory or punitive damages

◆ **Lump sums not covered**

- Buybacks or payment of company shares, because they are payments as a way of returning money to shareholders, not for personal services

Child Support – Lump Sums



◆ Issues still remain

◆ OCSE/APA formed Lump-Sum Collaborative Workgroup with state CSE officials

- When should ER inform state that a lump-sum payment will be made
- Whether state-ER communications can be made electronically
- Reasonable time for state to determine if lump-sum payment is subject to withholding

A Lobbying Update From APA



Thank You

**Please complete your
evaluations**