TASSCUBO 2023 Winter Conference

Out of State and International Remote
 Workforce – Tax & Other Employment Risks
 & Challenges

January 24, 2023

Out of State and International Remote Workforce – Tax & Other Employment Risks & Challenges

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CORE OBJECTIVES

1

Identify risk areas and challenges related to having a remote workforce.

2

Construct a team at your institution to assess/limit risks and overcome challenges of having a remote workforce.

3

Gain general understanding of requirements, registrations, and staffing needs to be in compliance with foreign state/country laws.



Every state and every country is different! And the rules change! Each situation must be evaluated separately and consistently monitored. What is
Meant by
Remote
Workforce?



Remote Worker – General Definition

- Working from an alternative worksite such as the employee's home or any other location outside the institution's physical office.
- Includes
 - Fully remote
 - Hybrid remote
- Discussion today is addressing "foreign" remote workforce – employees working outside of Texas

Examples

- Texas employee travels to San Diego to attend a weeklong conference.
 - Employee is working remotely, but not what we are discussing today.
 - Such work can result in compliance issues, but risk is lower.
- Texas employee has summer home in Colorado and employer allows (or may not know) employee to work in Colorado for 3-4 months during the summer. Employee works in Texas for the remainder of the year.
- Employee works full-time outside state of Texas.

Remote Workers - Risks

Important - subject to state/international laws where employee conducts work

- Tax
- Unemployment Insurance
- Workers' Compensation
- Safety
- Benefits
- Labor Laws



Stay Focused



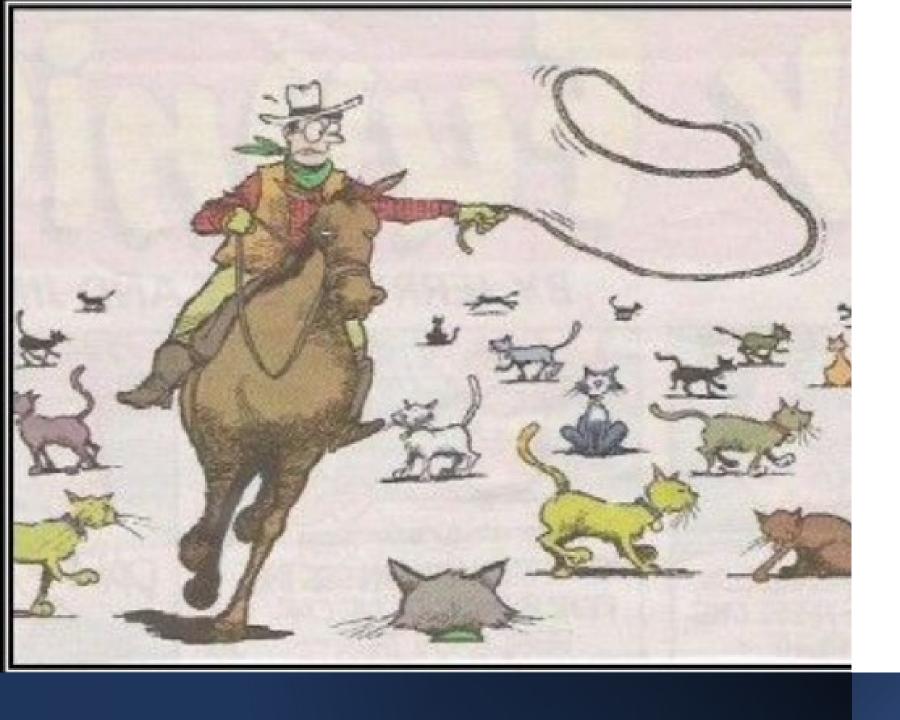
Team Approach

Who should be the main players at your institution?

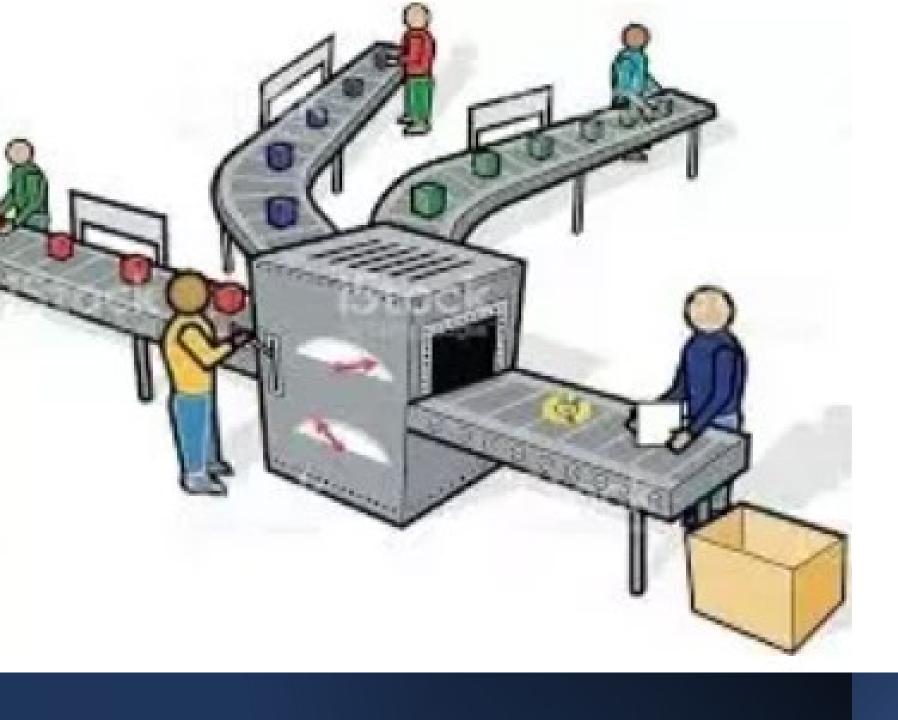
- Human Resources
- Tax Office
- Payroll Office
- Risk Management
- General Counsel
- Outside Consultant

Challenges

One big challenge can be identifying where employees are located



Where are my employees located?



Desired Approach

Challenges

- Foreign states/countries have differing employment rules and regulations
 - Cookie cutter approach is difficult to achieve
- Stress and additional work placed on staff to maintain compliance requirements in multiple locations
- Having State of Texas employees working in foreign states/countries

When is My
Institution
Subject to
Foreign State
Employment
Requirements?

- Nexus must exist
- Nexus means connection
- Employee working in foreign state can create nexus
 - Time present in state
 - Amount of wages paid for work performed in foreign state



- Pay frequency
- Wage/hour
- Overtime
- Notice requirements posters
- Recordkeeping
- Benefits that must be offered
- Out-of-network benefits
- Other Depending on the state

Multi-State Employer Registration & Reporting

- Report to Texas Workforce Commission via State Directory of New Hires.
- Register with the U.S. Department of Health and Human Services.
 - For each separate state employed.

OMB Control No: 0970-0166 Expiration Date: 07-31-2022

MULTISTATE EMPLOYER REGISTRATION FORM FOR NEW HIRE REPORTING

Employers who have employees working in two or more states may use this form to register to submit their new hire reports to one state or make changes to a previous registration. Multistate employers may also visit https://ocsp.acf.hhs.gov/OCSE/ to register or make changes electronically.

Federal law (42 USC 653A(b)(1)(A)) requires employers to supply the following information about newly hired employees to the State Directory of New Hires in the state where the employee works:

- Employee's name, address, Social Security number, and the date of hire (the date services for remuneration were first performed by the employee)
- Employer's name, address, and Federal Employer Identification Number (FEIN)

If you are an employer with employees working in two or more states, AND you will transmit the required information or reports magnetically or electronically, you may use this form to designate one state where any employee works to transmit ALL new hire reports to the State Directory of New Hires.

Select all other states and U.S. territories where you have one or more employees.*

Do not include the previously selected reporting state.

Select at least one state or territory to register as a multistate employer.

All States and Ter	rritories				
Alabama	Alaska	Arizona	Arkansas	California	Colorado
Connecticut	Delaware	District of Columbia	Florida	Georgia	Guam
Hawaii	Idaho	Illinois	Indiana	lowa	Kansas
Kentucky	Louisiana	Maine	Maryland	Massachusetts	Michigan
Minnesota	Mississippi	Missouri	Montana	Nebraska	Nevada
New Hampshire	New Jersey	New Mexico	New York	North Carolina	North Dakota
Ohio	Oklahoma	Oregon	Pennsylvania	Puerto Rico	Rhode Island
South Carolina	South Dakota	Tennessee	Texas	Utah	Vermont
Virgin Islands	Virginia	Washington	West Virginia	Wisconsin	Wyoming

Payroll Taxes

Register with State's Department of Revenue

Form W-4/State form

Tax withholding

Tax depositing/reporting

Local taxes

KANSAS BUSINESS TAX APPLICATION 301018 PART 1 - REASON FOR APPLICATION (mark one) NOTE: If registered but adding another business Registering for additional tax type(s) FOR OFFICE USE ONLY Started a new business Purchased an existing business. Enter federal Employer ID Number (EIN) of previous owner. See instructions on page 2 for important Tax Clearance information. PART 2 - TAX TYPE (check the box for each tax type or license requested and complete the required PARTS of this application). Retailers' Sales Tax Tire Excise Tax Nonresident Contractor (Complete Parts 1, 2, 3, 4, 5 & 12) (Complete Parts 1, 2, 3, 4, 5 & 12) (Complete Parts 1, 2, 3, 4, 5, 11 & 12) ■ Water Protection/Clean Drinking Water Fee Retailers' Compensating Use Tax Vehicle Rental Excise Tax (Complete Parts 1, 2, 3, 4, 5 & 12) (Complete Parts 1, 2, 3, 4, 5 & 12) (Complete Parts 1, 2, 3, 4, 5 & 12) Consumers' Compensating Use Tax Dry Cleaning Surcharge IMPORTANT: Businesses are required (Complete Parts 1, 2, 3, 4, 5 & 12) (Complete Parts 1, 2, 3, 4, 5 & 12) to electronically file returns and/o ■ Withholding Tax Liquor Enforcement Tax reports for Kansas Retailers' Sales, (Complete PARTS 1, 2, 3, 4, 6 & 12) (Complete Parts 1, 2, 3, 4, 8 & 12) Compensating Use, Withholding, Liquor Drink, Liquor Enforcement, Cigarette Corporate Income Tax Liquor Drink Tax (Complete Parts 1 2 3 4 7 8 12) (Complete Parts 1, 2, 3, 4, 9 & 12) Consumable Materials and Tobacco taxes. See the electronic file and Privilege Tax Cigarette Vending Machine Permit (Complete Parts 1, 2, 3, 4, 7 & 12) pay options available to you on (Complete Parts 1, 2, 3, 4, 10 & 12) page 13, or visit our website at Transient Guest Tax Retail Cigarette/Electronic Cigarette Licens (Complete Parts 1, 2, 3, 4, 10 & 12) (Complete Parts 1, 2, 3, 4, 5 & 12) PART 3 - BUSINESS INFORMATION (please type or print). Sole Proprietor Limited Partnership 1. Type of Ownership (check one): General Partnership Limited Liability Partnership Limited Liability Company Federal Government Other Government Non-Profit Corporation Limited Liability Sole Member Other: S Corporation Date of Incorporation: State of Incorporation: C Corporation Date of Incorporation: State of Incorporation: 2. Business Name: 3. Business Mailing Address (include apartment, suite, or lot number): City: State: Zip Code: 4. Business Phone: Email: 5. Business Contact Person: __ 6. Federal Employer Identification Number (EIN): (DO NOT enter Social Security number here 7. Accounting Method (check one): Cash Basis Accrual Basis 8. Describe your primary (taxable) business activity: Enter business classification NAICS Code (see instructions on page 5): 9. Parent Company Name (if applicable): Parent Company EIN: ___ Parent Company Address (include apartment, suite, or lot number): City: _____ County: ____ 10. Subsidiaries (if applicable). If more than two, list them on a separate sheet and enclose it with this form. Company Address (include apartment, suite, or lot number): Name: ___ Company Address (include apartment, suite, or lot number): City: County: 11. Have you or any member of your firm previously held a Kansas tax registration number? No Yes If yes, list previous number or name of business: (PART 3 continues on next page) CR-16 (Rev. 6-20)

State Business Tax Application Example

PART 6 - WITHHOLD	ING TAX						
1. Date you began making p	ayments subject to	Kansas withholding:					
2. Estimate your annual Kan	sas withholding tax:	3200 and under	(annual filer)	\$2	01 to \$1,20	0 (quarterly filer)	
31,201 to \$8,000 (mor	nthly filer)	\$8,001 to \$100,0	000 (semi-monthly filer)	\$1	00,001 and	above (quad-mo	nthly filer)
3. If your withholding reports	s and returns are pre	pared by a payroll s	ervice, complete the fo	llowing inf	ormation a	bout the payroll	company:
Name:			EIN:		Phone:		
City:		County:		State: _		Zip Code:	
 Did you hire a home hear registration? 					(FMS), to	report withhold	ing for this
Name:				EIN:			
			8				

905019

Division of Taxation 120 SE 10th Avenue PO Box 3506 Topeka KS 66625-3506 Mark A. Burghart, Secretary



Phone: 785-368-8222 Fax: 785-291-3614 www.ksrevenue.org Laura Kelly, Governor

April 2, 2021

UNIVERSITY OF TEXAS SYSTEM 210 W 7TH ST AUSTIN, TX 78701-2903

Attached is your Kansas Withholding tax registration certificate. Refer to the next page to see how to use your certificate. If you close or sell your business, please return this certificate along with a Discontinuation of Business form, which can be found on our web site.

You are required by Kansas law to file returns electronically. To do so or make payments electronically, visit our web site at http://www.ksrevenue.org/eservices.html or www.webtax.org. See the next page for more details.

KANSAS DEPARTMENT OF REVENUE

www.ksrevenue.org

Division of Taxation

WITHHOLDING TAX REGISTRATION CERTIFICATE



University of Texas System 15415 W 88th Ter Lenexa, KS 66219-1410

Tax Account Number: 036-XXXXX0145F-01 Inception Date: 04/01/2021

Filing Frequency: Monthly

This Registration Certificate is valid until canceled and is not transferable.

+01000000+

ACERT

02252

500518

K-4 (Rev. 11-18)

KANSAS EMPLOYEE'S WITHHOLDING ALLOWANCE CERTIFICATE

Use the following instructions to accurately complete your K-4 form, then detach the lower portion and give it to your employer. For assistance, call the Kansas Department of Revenue at 785-368-8222.

Purpose of the K-4 form: A completed withholding allowance certificate will let your employer know how much Kansas income tax should be withheld from your pay on income you earn from Kansas sources. Because your tax situation may change, you may want to re-figure your withholding each year.

Exemption from Kansas withholding: To qualify for exempt status you must verify with the Kansas Department of Revenue that: 1) last year you had the right to a refund of all STATE income tax withheld

because you had no tax liability; and 2) a K-4 form from you, they must withhold this year you will receive a full refund of all Kansas income tax from your wages without STATE income tax withheld because you will have no tax liability.

Basic Instructions: If you are not exempt, complete the Personal Allowance Worksheet that follows. The total on line F should not exceed the total exemptions you claim under "Exemptions and Dependents" on your Kansas income tax return.

NOTE: Your status of "Single" or "Joint" may differ from your status claimed on your federal Form W-4).

Using the information from your Personal Allowance Worksheet, complete the K-4 form below, sign it and provide it to your employer. If your employer does not receive

exemption at the "Single" allowance rate.

Head of household: Generally, you may claim head of household filing status on your tax return only if you are unmarried and pay more than 50% of the cost of keeping up a home for yourself and for your dependent(s).

Non-wage income: If you have a large amount of non-wage Kansas source income, such as interest or dividends, consider making Kansas estimated tax payments on Form K-40ES. Without these payments, you may owe additional Kansas tax when you file your state income tax return.

Allowance Rate: If you are a single filer mark "Single" If you are married and your spouse has income mark "Single" If you are married and your spouse does not work mark "Joint" Enter "0" or "1" if you are married or single and no one else can claim you as a dependent (entering "0" may help you avoid having too little tax withheld)		Personal Allowance						
you avoid having too little tax withheld)	A All	If you are married and your spouse has in					Α	
you avoid having too little tax withheld)							B	
Enter the number of dependents you will claim on your tax return. Do not claim yourself or your spouse or dependents that your spouse has already claimed on their form K-4							С	
dependents that your spouse has already claimed on their form K-4) En	ter "2" if you will file head of household on your tax return	n (see conditions ur	der Head of household	above)		D	
Cut here and give the lower portion to your employer. Keep the top portion for your records. ▼ Kansas Employee's Withholding Allowance Certificate Whether you are entitled to claim a certain number of allowances or exemption from withholding is subject to review by the Kansas Department of Revenue. Your employer may be required to send a copy of this form to the Department of Revenue. 1 Print your First Name and Middle Initial Last Name 2 Social Security Number Mailing address 3 Allowance Rate Mark the allowance rate selected in Line A above. Single							E	
Kansas Employee's Withholding Allowance Certificate Whether you are entitled to claim a certain number of allowances or exemption from withholding is subject to review by the Kansas Department of Revenue. Your employer may be required to send a copy of this form to the Department of Revenue. 1 Print your First Name and Middle Initial Last Name 2 Social Security Number Mailing address 3 Allowance Rate Mark the allowance rate selected in Line A above. Single Joint 4 Total number of allowances you are claiming (from Line F above)	: Ac	Id lines B through E and enter the total here					F	
Mailing address 3 Allowance Rate Mark the allowance rate selected in Line A above. 5 Enter any additional amount you want withheld from each paycheck (this is optional)		Whether you are entitled to claim a certain number of	of allowances or exemp	otion from withholding is sub	ject to re	viev	w by the	
Mark the allowance rate selected in Line A above. Single	1	Whether you are entitled to claim a certain number of Kansas Department of Revenue. Your employer may	of allowances or exem y be required to send a	otion from withholding is sub	ect to re partment	of R	w by the Revenu	e.
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6 I claim exemption from withholding. (You must meet the conditions explained in the "Exemption from withholding" instructions above.) If you meet the conditions above, write "Exempt" on this line	1	Whether you are entitled to claim a certain number of Kansas Department of Revenue. Your employer may Print your First Name and Middle Initial	of allowances or exem y be required to send a	otion from withholding is sub- copy of this form to the Dep 3 Allowance Rate Mark the allowance ra	pject to repartment 2 S ate selec	of R	w by the Revenu	rity Number A above.
Instructions above.) If you meet the conditions above, write "Exempt" on this line	1	Whether you are entitled to claim a certain number of Kansas Department of Revenue. Your employer may Print your First Name and Middle Initial Mailing address	of allowances or exem y be required to send a Last Name	otion from withholding is sub- copy of this form to the Dep 3 Allowance Rate Mark the allowance ra	pject to repartment 2 S ate selec	ocia	w by the Revenu	rity Number A above.
SIGN HERE Date	_	Whether you are entitled to claim a certain number of Kansas Department of Revenue. Your employer may Print your First Name and Middle Initial Mailing address Total number of allowances you are claiming (from Line F abo	of allowances or exemy be required to send a Last Name	otion from withholding is sub- copy of this form to the Dep 3 Allowance Rate Mark the allowance ra	oject to repartment 2 S ate selectes	of R	w by the Revenu il Secui in Line Joint	rity Number A above.
HERE P	6	Whether you are entitled to claim a certain number of Kansas Department of Revenue. Your employer may Print your First Name and Middle Initial Mailing address Total number of allowances you are claiming (from Line F about Enter any additional amount you want withheld from each pay I claim exemption from withholding. (You must meet the cond instructions above.) If you meet the conditions above, write "E Note: The Kansas Department of Revenue will receive yo	of allowances or exemy y be required to send a Last Name Last Name ove) ycheck (this is optiona titions explained in the ur federal W-2 forms ur federal W-2 forms	otion from withholding is sub- copy of this form to the Dep 3 Allowance Rate	glect to repartment 2 S ate selecte	ocia ocia 4 5	w by the Revenu al Secur in Line Joint	e. rity Number A above.
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Other Potential Tax Exposures

- Sales Tax
 - ➤ Registration with State's Department of Revenue
 - ➤ Collecting and reporting of sales taxes
- Corporate income taxes
 - ➤ Unrelated business income (UBI)
 - ➤ Tracking UBI
 - Filing of state UBI tax returns

Tax Consideration for Employee

- Employee may have tax filing requirements
- Employee's responsibility



Workers' Compensation

- Coverage provided in states
- Some are monopolistic (OH, WY, WA, ND)
- Class Codes NCCI used, but not in all states
- Claims
- Reporting Requirements
- Audits

State Audit Letter



Governor Mike DeWine Administrator/CEO Stephanie McCloud

www.bwc.ohio.gov 1-800-644-6292

Policy Number: 1482552

December 16, 2022

BOARD OF REGENTS OF THE UNIV OF TEXAS UNIVERSITY OF TEXAS SYSTEM ETAL 210 W 7TH ST AUSTIN, TX 78701-2903

RE: Premium audit notification letter

Dear Employer,

Each year, BWC audits Ohio employers' records to ensure each employer pays the proper amount of workers' compensation premiums for the risks associated with their business. We need your cooperation in auditing your business this year.

Please fill in the contact information requested below and complete the enclosed questionnaire. Fax a copy of both documents to 614-719-5914, email to mary.w.1@bwc.state.oh.us or return the documents in the enclosed self-addressed return envelope. We require your response within 10 business days. After we receive the information, we'll contact you to schedule the audit. The next page of this letter lists items we need for the audit.

Our representative may have questions. During the audit, please make available a person with knowledge of your business operations and of the financial records we're requesting. In addition, our representative may need to conduct a walking tour of your operational facilities.

Please note that failure to comply or to provide requested documentation could result in penalties. This could jeopardize your eligibility for group or alternative rating plans.

If you have questions, please contact us as soon as possible.

Sincerely,

Mary Williams, Customer Service Assistant 2 Mary.w.1@bwc.state.oh.us 614-644-0646

Requested Documents

Please assemble the information and documents described below before the BWC representative arrives for the audit. You need these items from <u>July 1, 2021 through June 30, 2022.</u> Any subsequent policy year completed after the date of this letter may also be subject to audit.

- Payroll summaries for Ohio payroll (by policy year or quarters).
- Records that detail payroll separately for each classification code used by your company. We
 prefer spreadsheets. Records must show employee names, titles, departments, classification
 codes, and gross quarterly wages (not including Section 125 payments), split by classification
 code if more than one applies.
- Quarterly State Unemployment (SUTA) detail wage reports reported to the Ohio Department of Job and Family Services.
- Employer quarterly federal tax returns Form 941 (or annual Form 943 or Form 944).
- Federal income tax return that was due during the policy year, including all schedules. If on extension, then the previous one filed.
- Federal Form 1099s (including Form 1096) and payments made for casual and spot labor.
 Include documentation showing that individuals without Federal ID numbers are independent contractors (such as contracts, workers' compensation, or liability insurance certificates, or business invoices).
- We may need other accounting or corporate records to answer or clarify questions that arise.
 These records may include, but are not limited to, the following: W-2s, W-3s, corporate minutes, general ledgers, check registers, cash disbursement journals, and worksheets showing construction cap calculations.
- If you have Ohio employees working in other states, copies of the other states' workers' compensation policies showing the effective dates and estimated payroll and/or premium amounts.
- Any documents, in addition to those requested above, that were used to calculate the true-up payroll you reported to Ohio BWC.
- The auditor will need a payroll projection by class code for the current policy year to adjust the Estimated Annual Premium as needed.

Unemployment Compensation Insurance

Register with appropriate State's Department of Labor

Contributing/Reimbursing Employer

Contributions

State Filings

Unemployment Compensation Insurance

Where does employer register?

Four-part test must be reviewed (stop at first test satisfied)

- Are services localized? Are services performed outside the state incidental to those performed within the state? If so, employer is subject to state in which the services are localized.
- Where is the employee's base of operations? If in a particular state, that is the UI state.
- Where is the place of direction and control?
- What is the employee's state of residence?

Sample State Department of Labor Application

KANSAS DEPARTMENT OF LABOR www.dol.ks.gov

K-CNS 010 (Rev. 3-19)

EMPLOYER STATUS REPORT

For Internal Use Only

Page 1 of 5

SUBMIT ONLINE: www.KansasEmployer.gov MAIL: Unemployment Tax Contributions P.O. Box 400 Topeka, KS 66601-0400 (785) 291-3425

See instructions on page 5. The information requested in this report is required to be provided by K.S.A. 44-714(f) and K.A.R. 50-2-5. It will be used only by public officials in the performance of their public duties. Section 6103(d) of the Internal Revenue Code authorizes IRS to exchange information with us for audits and certifications.

	, ,,	ership? (check one below)		
	Individual	Limited Partnership	Estate	
	General Partnership	Joint Venture	Receivership	
	Limited Liability Company (LLC)	Corporation (Inc.)	Trust	
	Limited Liability Partnership (LLP)	Governmental/Political	Sub-Division (if checked, answer questions 2a and	2b)
	Other:			
2.	If you are a governmental or political su	b-division, select the branch	of government and your finance option:	
	2a. Branch of government (check one)	2b. Finance o	otion (check one)	
	State Local Indian 7	ribe Contri	outing Reimbursing Rated Governmenta	al
3.	Are you a 501(c)(3) exempt organization	n? YES NO (if	YES, answer 3a and 3b)	
	3a. Finance option (check one)	ontributing Reimbursing		
	3b. Have you received the 501(c)(3) ex	emption letter from the IRS?	YES NO (if NO, explain below)	
	Assume Destructional Family words			
	Are you a Professional Employment Or	ganization (P.E.O.)?		
1.	Are you a Professional Employment Or YES (If YES, you must submit a sec		ient.) \square NO	
	YES (If YES, you must submit a sep	arate K-CNS 015 for each o	, —	
	YES (If YES, you must submit a sep	arate K-CNS 015 for each o	ient.) NO ates the most revenue for your business:	
	YES (If YES, you must submit a sep	parate K-CNS 015 for each coroduct in Kansas that gener	ates the most revenue for your business:	
5.	YES (If YES, you must submit a sep Describe the major service, activity or p	parate K-CNS 015 for each coroduct in Kansas that generate the construction industry?	ates the most revenue for your business:	
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UNEMPLOYMENT TAX CONTRIBUTIONS P.O. Box 400, Topeka, KS 66601-0400 • Phone (785) 296-5027 • Fax (785) 291-3425

Other Considerations

Secretary of State Registrations

- Registration required with SOS if transacting business in state
- Presence of employee may result in transacting business
- Institutions as governmental agencies may not be required to register in some states

Travel Reimbursements

Risks to
Consider with
International
Employees



Immigration & Employment Laws/Requirements

- Review immigration law to make sure employee is traveling in proper visa status
- Seek immigration counsel (internal or external)
- Licensing requirements
- Notice requirements posters
- Pay frequency
- Minimum wage
- Overtime
- Recordkeeping
- Benefits sick days, vacation days, maternity leave, etc.

Permanent Establishment

- PE generally defined under two general tests:
 - Whether the institution has a fixed place of business within the target country, as defined under the language of a specific treaty
 - Whether the institution operates in the target country through a dependent agent that habitually exercises the authority to conclude contracts on behalf of the corporation in the target country
- Establishing PE will subject institution to taxes in foreign country
- Presence of employee may/may not create a PE

Payroll Taxes

PE may/may not be required for employer to be liable for employment taxes – depends on country

Registration requirements

Tax withholding

Tax depositing/reporting

Social Security
Taxes &
Unemployment
Compensation
Insurance

Might be subject to foreign country's social security taxes

Social security totalization agreement - certificate of coverage - method to avoid paying foreign country social security taxes

Might be liable for unemployment compensation insurance tax in foreign country

Certificate of coverage does not exempt U.S. employer from this tax

Approaches to Consider Involving Remote Employees in Foreign Country

- Register as employer
- Pay U.S. bank account and not register
 - ➤ Short sojourn
 - ➤ Host country work around
 - Foreign employer exemption
 - Limited registration
 - Professional Employment Organization (PEO)
 - Shadow Payroll
 - Independent contractor

Items to Consider With Remote Workers

- Determine if your institution will allow employees to work remotely in foreign state/country
- Identify where your institution currently has remote employees
- Develop processes to identify where employees are located
- Identify any foreign states/countries which are off limits
- Develop clear guidelines to address remote work arrangements

Items to
Consider
With Remote
Workers
(cont.)

- Determine length of time remote employee will be approved to work in foreign state/country
- Engage your institutional main players early in the process to best address risks
- Engage outside consultants to assist with foreign state/country requirements
- Identify your institution's responsibilities once a nexus is established



Questions??