Out-of-State Wage Reporting

State UI Tax Reporting Methods and Recommended Practices

presented by

NATIONAL PAYROLL REPORTING CONSORTIUM, INC. (NPRC)

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November 2026

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Purpose of this Document

This report addresses an area of concern for employers with employees working in multiple states that need to pay unemployment insurance (UI) taxes. Providing employers credit for Out-of-State (OOS) wages is an accommodation for those employers who have employees that have been transferred to another state in the same calendar year. Employers are generally permitted to take credit for the taxes paid on wages paid in the prior state, thus avoiding double taxation on those wages.

The concern centers on how employers can receive credit for the taxes paid to other state UI agencies. The following narrative describes the various approaches states have taken to accommodate the OOS wage credit. It is clear, however, that states are not consistent in how they capture OOS wages, or even how they define OOS wages. Moreover, as states modernize their UI tax systems, more states develop definitions and processes without consideration for standards or processing ease.

The goal of the report is to provide the reader with the various OOS wage processes, definitions, challenges, and the NPRC recommendation for best practices.

Background

Prior to computerization and newer UI tax systems, state UI tax agencies generally accepted employer reporting and taxable wage calculations, which may have included OOS wages. There were no methods in place to verify the OOS wage credit taken on the contribution report, other than periodic and random audits that could detect and verify OOS wages.

In the 1990's, state UI tax agencies began to modernize tax systems, some of which eliminated the employer contribution report by using the reported employee wage records to automatically calculate taxable wages and the employer UI taxes. This process works well for employers without wage reporting errors or adjustments, and without any OOS wages. It is not uncommon for employers or employees to initially report an incorrect Social Security Number (SSN), and to identify and correct the problem mid-year. When this occurs, state agencies interpret an employee with a corrected SSN to have been paid no wages by the employer in previous quarters, and they therefore reject the employer's (correct) calculation of taxable wages. Similarly, employers with OOS wages were not able to have their taxable wages calculated accurately because the state had no visibility of prior wages paid in other states in the same calendar year.

This is a link to the National Payroll Reporting Consortium (NPRC) report titled State Calculation of Taxable Wages with Credit for Earnings from Other States. The document was last revised in March 2014 and much of the state-specific information is no longer accurate due to the many system enhancements that states have implemented since 2014. Nonetheless, it does provide a good background on the different methods states use to handle OOS wage reporting. The first 12 pages of the report frame the issue and describe different methods to handle the reporting. Pages 24 - 37 in Appendix B provide each responding state's approach to handling OOS wages as of 2014. Those processes may not be in place today, or may have changed substantially.

Processes

States use various approaches to accommodate the OOS wage reporting issue. The following are some of the methods that states currently use:

- **Change State Law** – Iowa, Louisiana, Minnesota, Montana and Vermont changed their state laws to eliminate OOS wage credits. Employers in those states do not get credit UI for taxes paid in other states for employees transferred into their state. Consequently, employers could pay double UI taxes on those employees without regard to prior UI taxes paid on wages paid to the same employees earlier in the year in other states.

  It is interesting to note that the Montana Department of Labor & Industry was the driving force to change state law to eliminate OOS wage credits in Montana. The agency researched the issue and issued a report in 2012 that provided the information necessary to justify changing state law. The salient findings in the report were that OOS wage credits were not used by a significant number of employers. The report indicated that only 0.5% of employers used the OOS wage credit, while the review and monitoring of the OOS wage credit was a considerable workload for the agency. Most of the workload was due to the lack of computerization in Montana for processing quarterly UI wage and tax reports. Montana also conducted a 100% taxable wage verification process and OOS wages were a significant cause of taxable wage differences. Eliminating the credit for OOS wages impacted few employers but reduced the agency workload significantly.

  However, keep in mind that the vast majority (e.g., roughly 80%) of employers are only active in one state. OOS wage reporting is not a factor for single-state employers. But the 0.5% of employers that are multistate and may transfer employees between states employ as much as half of the U.S. workforce. It is not uncommon to see occasional employee transfers to new states, and thus not appropriate to design UI taxable wage calculation systems to not accommodate the issue. In fact, such a policy would serve as a disincentive to move employees into the state.
- **Change State Quarterly Wage Report** – Many states now collect OOS wages for each employee on the UI quarterly wage report. How they collect the information varies – some examples are:
  - OOS wages reported and identified by each state, which can be complex since some employees can change states more than once in a year.
  - OOS wages reported, but the state is not identified.
- **Change the State Quarterly Contribution Report** – For states that still have a contribution report, some have modified the contribution (tax summary) report to include a line for total OOS wages for all employees.
- **Amend OOS Wages After the Fact** – Some states require employers to submit amendments after the quarterly wage and tax reports are submitted, i.e., they do not accept taxable wage totals other than the value automatically calculated by the state system. This is the least desirable method. The process requires employers to amend filings - it is not timely and causes increased workloads for UI tax agencies and employers. Worst of all, since the amendments are usually processed after the delinquencies are determined, employers are mailed delinquency statements. This is a terrible experience for all parties.

- **Accept the Employer Taxable Wage Total** – This was the standard method in the past and continues to be method for many state UI agencies.

OOS Wage Processes		
State(s)	**Description**	**Consequences**
IA, LA, MN, MT	Change state law to eliminate OOS Wages.	Employers with OOS wages will be double-taxed. State UI agencies will likely have simplified reporting and processing.
AZ, FL, MD, MI, NC, OH, SC	Provide OOS wage reporting, preferably on the quarterly wage report.	Employers proactively report OOS wages at the employee level. State UI agencies now have the data to verify OOS wage credits and/or accurately calculate taxable wages.
AK, MO	Include an OOS wage indicator on the quarterly UI tax return.	Enables employers to notify state UI tax agencies that OOS wages were used to calculate taxable wages. Could be helpful for states to identify reasons for taxable wage calculation differences.
DC, IN, MA, NM, NV, OR	Employers required to submit amendments after filing the quarterly UI wage and tax report. DC also requires employers to submit copies of the report filed with the other state and verifies the wages on the federal wage reporting system.	This is the least acceptable reporting method and results in a negative experience for employers and state UI agencies. It often results in states erroneously issuing employer delinquency statements.
Many states	Accept employer taxable wages	These states default to accepting employer reporting. The vast majority of employers report accurately. OOS wage credits and SSN number discrepancies do not cause reporting challenges or erroneous report rejects for states that accept employer taxable wage amounts.

Definitions

For states that do have OOS wage reporting on the quarterly wage report, questions arise as to what constitutes OOS wages. Most state UI agencies look for a permanent transfer of an employee from one state to another state. Absent a permanent transfer, most states ask employers to follow guidance from the US Department of Labor (USDOL) that covers localization of work provisions. A link to the Unemployment Insurance Program Letter 20-04 - *Localization of Work Provisions - Principles for Determining Where Wages Should Be Reported When Work is Performed Entirely in One State or in a Number of Different States* - can be found here.

State UI Administrators should understand that there may be a significant amount of confusion on this topic due to the COVID pandemic, which caused a significant percentage of the workforce to work from home – sometimes across state lines. Some workers took the opportunity to work "from anywhere," i.e., from vacation homes or those of family members. It has been unclear in many cases whether such relocations have been permanent and should be recognized for UI wage reporting purposes. It is ultimately the employer's responsibility to interpret the guidance and select a state to report all of the wages for the applicable employee(s).

The following are examples of different state interpretations of OOS wages:

- **Employer-Defined** – Most states do not restrict OOS wage reporting if the OOS wages are in the same calendar year, for the same employee working for the same employer.
- **South Carolina Interpretation** – OOS wages are permitted only for the permanent transfer of an employee to South Carolina; and **only** in the first quarter that the transfer occurred. OOS wages can only be reported in that first quarter and not again for two calendar years from the initial quarter. South Carolina **rejects** wage reports for an employer with an employee who has been reported OOS wages for more than one quarter. This process is extraordinarily difficult for employers to administer. This is a link to the South Carolina DEW instructions.
- **District of Columbia Interpretation** – The District expects a permanent transfer and restricts OOS wage reporting to a single prior state, even when there were multiple prior states in which wages were reported and taxes paid.

It appears that jurisdictions like DC, MD and SC restrict OOS wage reporting because they believe that employers may be improperly inflating OOS wages (or otherwise mis-calculating taxable wage totals) to reduce tax payments. Each of these three jurisdictions point to the USDOL Unemployment Insurance Program Letter (UIPL) 20-04) to support their OOS wage interpretations. The UIPL and attachments instruct states on *Localization of Work Provisions - Principles for Determining Where Wages Should Be Reported When Work is Performed Entirely in One State or in a Number of Different States*.

When there is a permanent transfer of work from one jurisdiction to another, it is clear that services should be reported to the jurisdiction of the new work location. However, even when following this guidance it is difficult to determine with finality where to report UI wages when the location of services is fluid. Employers and their representatives are making good-faith efforts to report the wages and pay the taxes. Jurisdictions like DC, MD, and SC are now penalizing these employers by unreasonably restricting reporting beyond the intended guidance in UIPL 20-04.

Large payroll service providers (PSPs) use binary program logic to report wages. PSPs rely on clients to affirmatively report prior wages paid in another jurisdiction specifically for taxable wage calculation purposes. PSPs do **not** have the ability to make evaluative decisions like:

- was the transfer permanent;
- was the service transitory;
- did the conditions meet the three-part sequential test in UIPL 20-04

OOS Wage Definitions		
State(s)	**Description**	**Consequences**
Most States	Not specifically defined; employer responsibility.	Employers are generally responsible for determining when and for whom OOS wages apply. Differences may be detected during employer UI audits.
SC	OOS wages may be taken only once in a 2-year period, in the initial quarter of a permanent transfer to South Carolina. This is a link to the South Carolina DEW instructions.	South Carolina rejects employer quarterly wage reports that contain an OOS wage amount for an employee if it is not the initial OOS wage quarter. This unique policy and processing rule creates significant challenges for employers who are trying to comply with many tax filing requirements. In South Carolina a rejected wage report means that UI taxes cannot be paid and employee wages cannot be posted, which could result in improper monetary determinations for UI benefits.
MD	OOS wages are permitted only for the permanent transfer of an employee to Maryland. There should only be **one** quarter of OOS wages. If there is an ongoing pattern of multi-state earnings, Maryland expects employers to follow federal guidance and select a state to report the applicable employee's combined wages for all states.	This policy is a challenge for reporting employees with fluid work assignments. When is a transfer permanent? How do employers determine permanency? This results in employers being penalized when trying to report and pay taxes in a timely and accurate manner.
DC	OOS wages may only be taken for a single state, even when an employee experiences OOS wages in multiple states.	The DC agency restricts OOS wage reporting and causes another reporting exception.

Challenges

The NPRC recognizes and appreciates the challenges state UI tax organizations face when processing state UI wage and tax reports. Many states are limited by their UI tax systems and state policies and are unable to implement OOS wage processing methods that enable employers to receive proper credit for OOS wages, while simultaneously having systems to make the process systematic and relatively easy for employers and state UI tax agencies. Nonetheless, this report identifies states with processes for OOS wages that present significant challenges for employers and UI tax agencies.

- **OOS Wage Adjusted After Filing the Initial Report** – The District of Columbia, Indiana, Massachusetts, New Mexico, Nevada, and Oregon are examples of UI tax agencies that require employers to submit amendments after the filing of the quarterly wage and tax report. Employers that take OOS wage credits in these states will often receive threatening delinquency notices for the UI taxes associated with unprocessed OOS wage credit amendments. Severe adverse tax consequences can result for employers with unprocessed amendments in states with penalty rate provisions. States using the amendment process for OOS wage credits invite unnecessary processing burdens and unfavorable experiences for employers and UI tax agencies. This approach to OOS wage processing is extremely adverse for employers and UI agencies.
- **Unique OOS Wage Policies** – South Carolina is an example of a state with a unique OOS wage policy. They permit OOS wages to be taken only in the initial quarter of a permanent transfer to South Carolina. Furthermore – and most importantly – South Carolina rejects employer quarterly wage reports that contain an OOS wage amount for an employee if it is not the initial OOS wage quarter. This unique policy and processing rule creates significant challenges for employers who are trying to comply with many tax filing requirements. In South Carolina a rejected wage report means that UI taxes cannot be paid and employee wages cannot be posted, which could result in improper monetary determinations for UI benefits. South Carolina is the only state with these policies.

OOS Wage Challenges		
State(s)	**Description**	**Consequences**
DC, IN, MA, NM, NV, OR	Amend OOS wages after the initial quarterly report.	This is the least desirable OOS wage reporting method. It often results in erroneous employer delinquencies, which in some states can result in penalties, interest, and penalty tax rates. States should not adopt this OOS wage policy.
DC, MD, SC	Unique OOS wage definitions and policies.	Standard definitions and policies enable uniform processes. Where exceptions exist, as with OOS policies and definitions in some states, employers and their representatives are more apt to

OOS Wage Challenges		
State(s)	**Description**	**Consequences**
		inadvertently make a reporting mistake.

NPRC Recommendations

There are two recommendations for state OOS wage policy. We provide these recommendations with the understanding that there are dual goals for OOS wage reporting policies. One, to ensure that wages are reported to the proper state for accurate UI benefit monetary determinations; and two, that employers are not double taxed for the same employee who is paid wages in two separate states.

- **Include OOS Wages on the Quarterly Wage Report** – Arkansas, Maryland, Ohio, and South Carolina are examples of states that follow this practice. States generally follow this model when their new UI tax systems automatically calculate taxable wages using reported employee wage records. Avoid arbitrary restrictions such as allowing credit from wages paid in only one state (i.e., a small number of workers permanently transfer to work in a new state more than once in a year, but it does happen). A state could accommodate this by permitting a "state" code of "MU" to connote that wages were earned in multiple states this year for this employee. This policy allows states to process OOS wages in real time with the regular UI wage and tax reports.
- **Accept Employer-reported OOS Wage Credits** – The amount of UI taxes saved by employers using OOS wage credits is very small when compared to overall employer UI tax collections. Furthermore, the amount of improper OOS wage credits taken by employers is likely a small fraction of that amount. The cost of the effort employers and some state UI tax agencies expend today to accommodate OOS wage reporting and amendment policies far exceeds the tax benefits derived. States would be better served to use the UI employer tax audit process to detect employers improperly taking OOS wage credits.

Summary of Selected State OOS Wage Reporting Methods

	OOS Wage Reporting Method				
State	**Wage Report**	**Tax Report**	**Amend**	**None**	**OOS Wage Definition**
AL				X	*Are wages paid to an employee by an Alabama employer for employment in another state useable in calculating the $8,000 taxable wages in Alabama? Yes*
AK		X			*If an employee is transferred to Alaska with the same company, the employer can receive credit for the amount paid to another state's taxable wages against Alaska's taxable wage base in the same calendar year.*
AR	X				*When an employee permanently moves to Arkansas from another state, but remains employed by the same employer, a credit against Arkansas' $7,000 taxable wage base may be taken for UI taxes paid in*

State	OOS Wage Reporting Method				OOS Wage Definition
	Wage Report	Tax Report	Amend	None	
					the former state of residence during the same calendar year.
CA				X	*Section 930.1 of the California Unemployment Insurance Code (CUIC) provides that a California employer who pays wages to an employee for employment subject to the unemployment insurance laws of another state, and reports to that state, can use such wages in computing the UI taxable wage limit in the same calendar year if the individual is subsequently transferred to California.*
DC			X		*Department of Employment Services (DOES) no longer accepts employer and agent out of state wage credit requests. To receive this credit, employers or agents must submit a copy of the applicable wage summaries for each employee for whom the employer is attempting to receive credit. Wage summaries for the respective states should include the employee's name, SSN and earnings for the quarter and year.*
FL	X				*Report employees who first received out-of-state taxable wages who worked and received wages from the same employer in Florida during the reporting quarter. If an employee customarily performs services on a continuing basis in more than one state, this form should not be used. Instead, you should contact the Department's Account Management process at 850-717-6628 to request a reciprocal coverage agreement.*
ID				X	*Employers may count wages they paid to a worker in another state in arriving at that individual employee's taxable wages for Idaho but only if tax has been paid on those wages to the other state as in Idaho Code §72-1349(1).*
IN			X		*Employers are entitled to a credit if they have paid wages to a state other than Indiana and the worker permanently relocates to Indiana during the calendar year. Employers must apply for this credit as an adjustment to the amount assessed by DWD when the quarterly wage and employment report is filed. Please note that the assessment should be paid in full, or the employer will be considered to be delinquent. Applying for a credit does not change the amount assessed or the employer's duty to pay in full on or before the due date. To successfully apply for a credit in E S S go to the request menu and select the Penalty/ Interest / Waiver option. For each individual that permanently relocated*

	OOS Wage Reporting Method				
State	**Wage Report**	**Tax Report**	**Amend**	**None**	**OOS Wage Definition**
					and is now localized to Indiana, please provide the worker's Social Security Number, Name, Prior State Name, Prior State Reported Gross Wages, Prior State Wage base, and the reason for the request in the comments box.
MA			X		*The Division of Unemployment Assistance has determined that employers in this circumstance must work directly with DUA staff to process these credits.*
MD	X				*When calculating the taxable wages for the contribution reports in the year of the transfer from another state, an employer should make the calculation for each employee based on wages paid to the employee before and after the transfer.*
MI	X				*Out of state wages are to be reported as a year to date (YTD) figure on the first quarter reported for the employee to Michigan.*
MO		X			*Enter 1 if wages reported to the UI agency of another state during the calendar year. Enter zero if not applicable.*
NM			X		*This form is used by employers to report employees with out-of-state wages who worked and received wages from the same employer in New Mexico during the reporting quarter. Out of State Wages are due 30 days from the end of the quarter.*
NV				X	***Wages Paid in Other States** – In computing the taxable wage base in Nevada, wages paid to an individual employee in another state in the same calendar year, upon which unemployment contributions have been paid in the other state, can be counted as part of the taxable wage base in Nevada for that same calendar year for that employee.*
NC	X				*Enter The Out of State (OOS) Wage Amount For The Employee Whose Wages Are Countable, In Another State.*
OH	X				*Out of state wages are to be reported as a year to date (YTD) figure on the first quarter reported for the employee to Ohio.*
OR			X		***Example 3** – Mary transferred from Washington (taxable wage base $38,200 for 2012) and her employer had paid up to the Oregon limit ($33,000 or over). Any Oregon wages paid that same year would be reported to Oregon, but would be in excess and not taxed. If Mary moved through several states prior to coming to Oregon, the employer may use the*

	OOS Wage Reporting Method				
State	**Wage Report**	**Tax Report**	**Amend**	**None**	**OOS Wage Definition**
					aggregate of all taxable wages paid to determine how much, if any to still report as taxable in Oregon.
SC	X				*The Out of State Taxable wage credit calculation occurs only in the quarter the individual employee starts having reportable wages in S.C. The Out of State taxable wage credit is not calculated if prior quarter wages have been reported to South Carolina.*
TN				X	*Prior Wages or Adjustments for Out-of-State or Predecessor Wages (required) - In order to accurately calculate Excess Wages and the amount of Premium Due, the Prior Wage amount for each employee must be correct. The calculation of Excess Wages is based on the first $7000 paid to each employee during the calendar year (the Tennessee Taxable Wage Base applicable to the quarter being reported). Modifying the Prior Wage amount in this system does not actually modify your prior quarterly reports. These amounts are only used to calculate Excess Wages for the current report. If you do not wish to modify the Prior Wage amount for individual employees, you will be allowed to modify the Total Excess Wage amount before your Premium Due is calculated.* *Please note that the following circumstances can cause the Prior Wage amount to be incorrect:* *1. Wages were reported to a state other than Tennessee during this calendar year for any employee that you are reporting to Tennessee this quarter. For additional information on this topic, click here.* *2. You filed using this system during any prior quarter during this calendar year and later submitted a form to make adjustments to any of the wage amounts you reported. For additional information on this topic, click here.* *3. You acquired a business in this calendar year in which a transfer of an Experience Rating from your Predecessor took place. For additional information on this topic, click here.* *If you do not wish to modify the Prior Wage Amount for individual employees, you will be allowed to modify the Total Excess Wage amount at a later step in this system, before your Premium Due is calculated.*