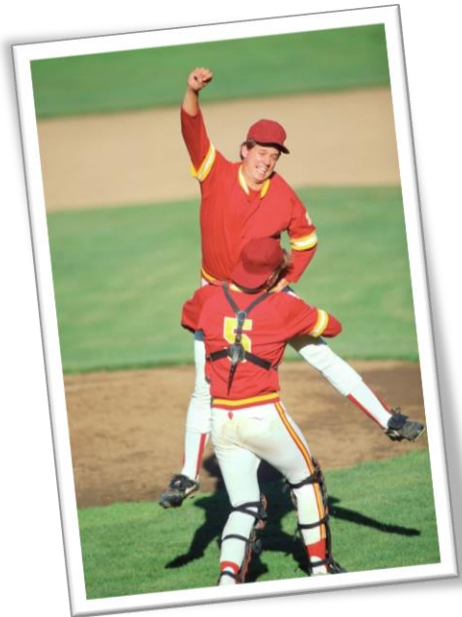


# Athletes and Entertainers

## Multistate Tax Issues



*Presented by*

**Timothy P. Noonan, Esq.**

# Summary of Topics

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- Section 1: The All-Important Concept of Residency
- Section 2: Pay to Play: Nonresident Income Allocation Issues
- Section 3: Tax Credits, Withholding and Other Stuff



# Section 1

*The All-Important  
Concept of Residency*





# Polling Question #1



What's the biggest issue for you in this field?

- Residency issues for athletes/entertainers
- Allocation issues for athletes
- Allocation issues for entertainers
- Other stuff

# Starting Point

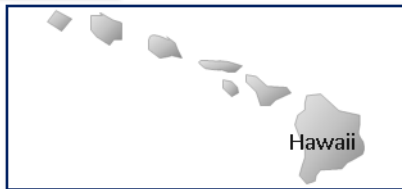
## *Overview of Income Tax Issues*

---



### Central Issue: Where Do I Pay Tax?

- Residency: Where do I “live?”
- Allocation: Where do I work?



# The All-Important Concept of Residency

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- Importance of Residency Status
- Basic Residency Tests
  - Residency Based on Domicile
  - Residency Based on Days
- Burden of Proof in Tax Cases
  - Jeter vs. NYS

# Different State Residency Tests

## *Domicile OR 'Statutory Residency'*



# Different State Residency Tests

## *Domicile OR 'Statutory Residency'*



7  
Months



200  
Days



Days  
Only



# Different State Residency Tests

*Domicile **OR** 'Non-Temporary/Transitory Purpose'*

---



California



Hawaii



Illinois



Michigan



Arizona



Montana

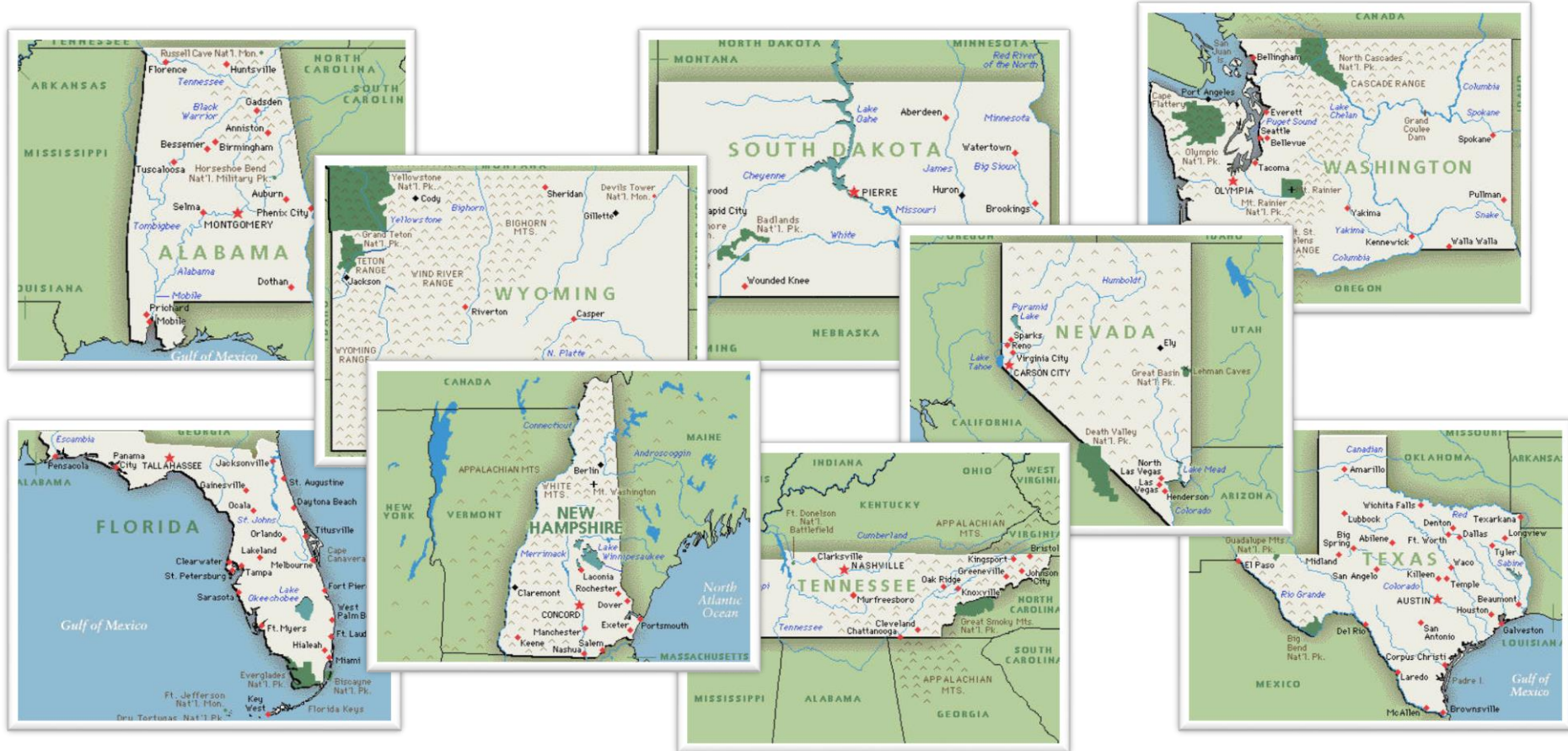
# The All-Important Concept of Residency

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- OH's Bright-Line Tests
- Domicile Only (sort of)
  - AL, SC, WI, KS, MI, NM  
(look out for “presumptions”)

# The All-Important Concept of Residency

## Best Places to Live



# Domicile



# The All-Important Concept of Residency

---

## ● Factor-Based Tests

- Home
- Business
- Time
- Near and Dear
- Family

## ● Leave & Land Rule



# Real-Life Case Studies on Domicile

---

- Derek Jeter: Burden of proof
- Lindy Ruff: Home sweet home?
- Phil Mickelson: Needs “Drastic Changes”
- Lebron James: No Place Like ...
- Playing hockey overseas?
- Tom Hanks: A lucky guy?
- Alec Baldwin: NYS vs. NYC

# The All-Important Concept of Residency

---

- “Statutory” Residency
  - “PPA” and 183 Days
  
- The “PPA” Test: Living Quarters
  - Any type of dwelling
  - *Gaied v. New York*: Taxpayer must “use as a residence”

# The All-Important Concept of Residency

---

- **Recordkeeping Issues & 183 Days**
  - Calendar
  - Phone Logs
  - Credit Cards
  - EZ Pass
  - Flight Records
  - Team Schedules
  - Tour Schedules
  - Monaeo Tracking App



# Case Studies on State Residency

---

- Derek Jeter: Counting games
- Lindy Ruff: Should be OK
- Phil Mickelson: N/A
- Hockey player: No issues
- Tom Hanks: An un-lucky guy?
- Alec Baldwin: NYS vs. NYC
- Paul McCartney: Band on the run?

# Attendance Validation #1



Keep this form handy!  
We'll have two more attendance validation items for you to write down later in today's webinar.

Please locate your  
Attendance Validation Form

(it should be the 5<sup>th</sup> page in your Handout Materials)

**state income tax**

**REMINDER!**

You can e-mail your questions during today's seminar to be passed along to our presenter for response during the Q&A session -



Send your questions to

***seminars@wolterskluwer.com***

# Section 2

## *Nonresident Income Allocation Issues*



# Pay to Play

## *Nonresident Income Allocation Issues*

---

- So-Called “Jock Taxes”
- Basic Concepts of Nonresident Taxation
  - “Sourcing” Rules
  - Wages = Workdays in State
  - Special Rules for Signing Bonuses

# Pay to Play

## *Nonresident Income Allocation Issues*

---

- CA's 1991 decision to enforce the “jock tax”
  - And “Michael Jordan's Revenge”
- City-Based Jock Taxes
  - Cleveland, Cincinnati, Detroit, KC
  - Watch out for Philly

# Two Methods for Allocation

---



Duty  
Days



Games  
Played

# Duty Days

---

- Most Common
- Federal Method
- FTA Approach



# Games Played

---

- Largely been abandoned
- *Saturday/Hillenmeyer vs. City of Cleveland (2015)*
  - Hillenmeyer: 5x higher under games played
  - Saturday: I didn't even play?
- Tennessee's \$2,500/Game Tax
  - NHL players exempt
  - NBA players will be in two years



# Duty Days Test

---



Total Income X Duty Days Spent in State  
Total Duty Days

# Duty Day Defined

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- All practice days, game days, travel days from pre-season to end of post-season play
- Plus off-season practice days, per contractual obligation
  - MLB AZ & FL Spring Training
- Travel days
  - Only if activity

# Entertainers *Not Safe Either*

---

- Al Franken
  - Doggonit, states like him
- Newman gets stung by CA
  - A “duty-day” type test
- Musicians/Comedians
  - Where show is located



# Real Life Case Studies on Days Allocation

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- Derek Jeter: 230 duty days; how many in taxing states?
- Phil Mickelson: Tourney location, but does it matter?
- Lebron James: Duty days
- Foreign Hockey player: n/a
- Tom Hanks: 100% NY?
- Alec Baldwin: NY/CA analysis

# Other Case Studies on Allocation

---

- One Direction, Inc.
  - Corporate Income Tax Allocation Rules
    - Flow-thru vs. Entity level
    - Three-factor analysis of property, payroll and sales
    - How to compute factors
    - Or single factor, sales only
  - What about sales tax on merch?

# Attendance Validation #2

Time to record our second attendance check item on your Attendance Validation Form

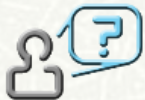
**duty day**



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# Take a Break!

## *Return in 5 Minutes*

### Featured Upcoming Program:



Steven G. Siegel  
J.D., LL.M. (Taxation)

**When Death Meets Taxes:  
What to Do When a Taxpayer Dies  
(Half-Day Course)**

**Monday, November 30, 2015**

# Taxation of Endorsement Issue

## State Specific Rules





# Royalties

---

## NY's Tony Bennett Case

- If based on NY services, it's NY taxable
- But is it a “royalty?”

## Other States

# Goosen and Garcia IRS Cases

---

- For services
  - Place of performance
- For likeness
  - Home base
- In between clubs?

# Real-Life Case Studies on Endorsements

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- Derek Jeter: Likeness vs. Services
- Phil Mickelson: It's complicated
- LeBron James: Why he tried to take his talents elsewhere
- Tom Hanks: Stupid is ...
- Alec Baldwin: What state is in his wallet?

# Signing Bonuses

---

## General Rule - Most States

- The payment of the bonus is not conditional on the signee playing any games for the team, performing any later services for the team, or even making the team;
- The signing bonus is payable separately from the salary and any other compensation; and
- The signing bonus is nonrefundable

# Signing Bonuses

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- Examples from States (see attached article)
  - CA: Vinny Testaverde case
  - WI: Dorsey/Dishman cases
  - NY: Clark case

# Signing Bonuses

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## Practical Considerations

- Focus on contractual language, of course
- Look at CBAs?
- Raise with agents/teams

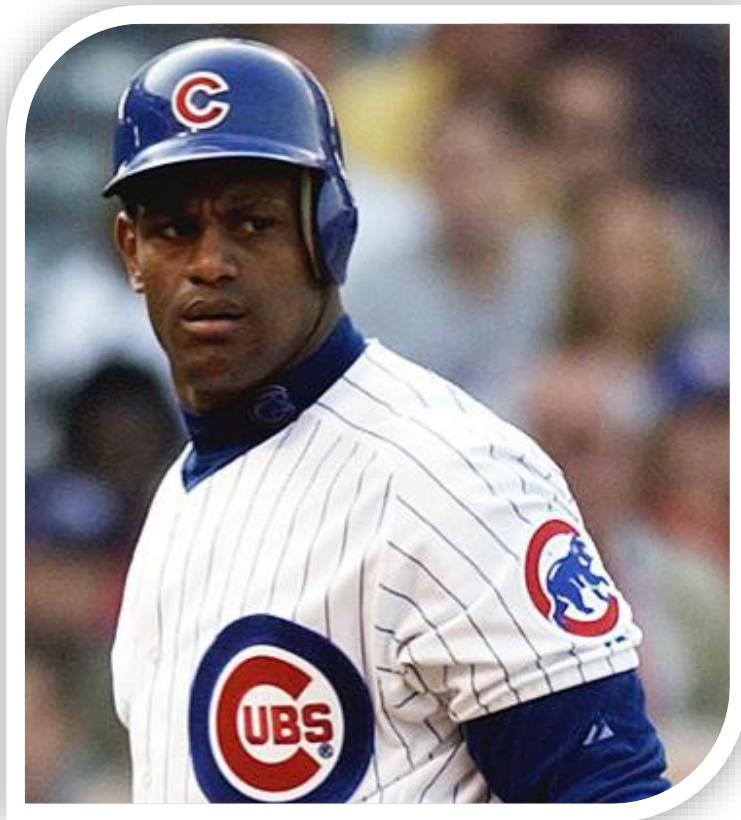
# Section 3

*Tax Credits,  
Withholding,  
and Other Stuff*



# Resident Tax Credits

## *Sosa vs. Illinois*





# How It Should Work

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- Full Tax in Resident State
- Tax in Nonresident State Based on Sourcing Rules
- Resident State Gives Credit

# How It Really Works

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- Different Tax Rates
- Different Sourcing Rules?
  - Signing Bonus Example
  - Royalty Rules



# *Wynne v. MD?*

---

- May 2015 Supreme Court case
  - Requires MD to give full resident credit for taxes paid to other states against MD state and local taxes
  - MD wanted to give credit only against state taxes
  - Will only affect tax calculation in taxpayer's resident state; definitely has impact for MD residents, but potential to affect other states as well

# Real-Life Case Studies

## *Resident Credits*

---

- Derek Jeter: N/A
- Lindy Ruff: N/A?
- Phil Mickelson: Reducing the CA bite
- LeBron James: Big time adjustment
- Tom Hanks: Also a BIG deal
- Alec Baldwin: NY/CA adjustments?

# Employer Withholding Issues

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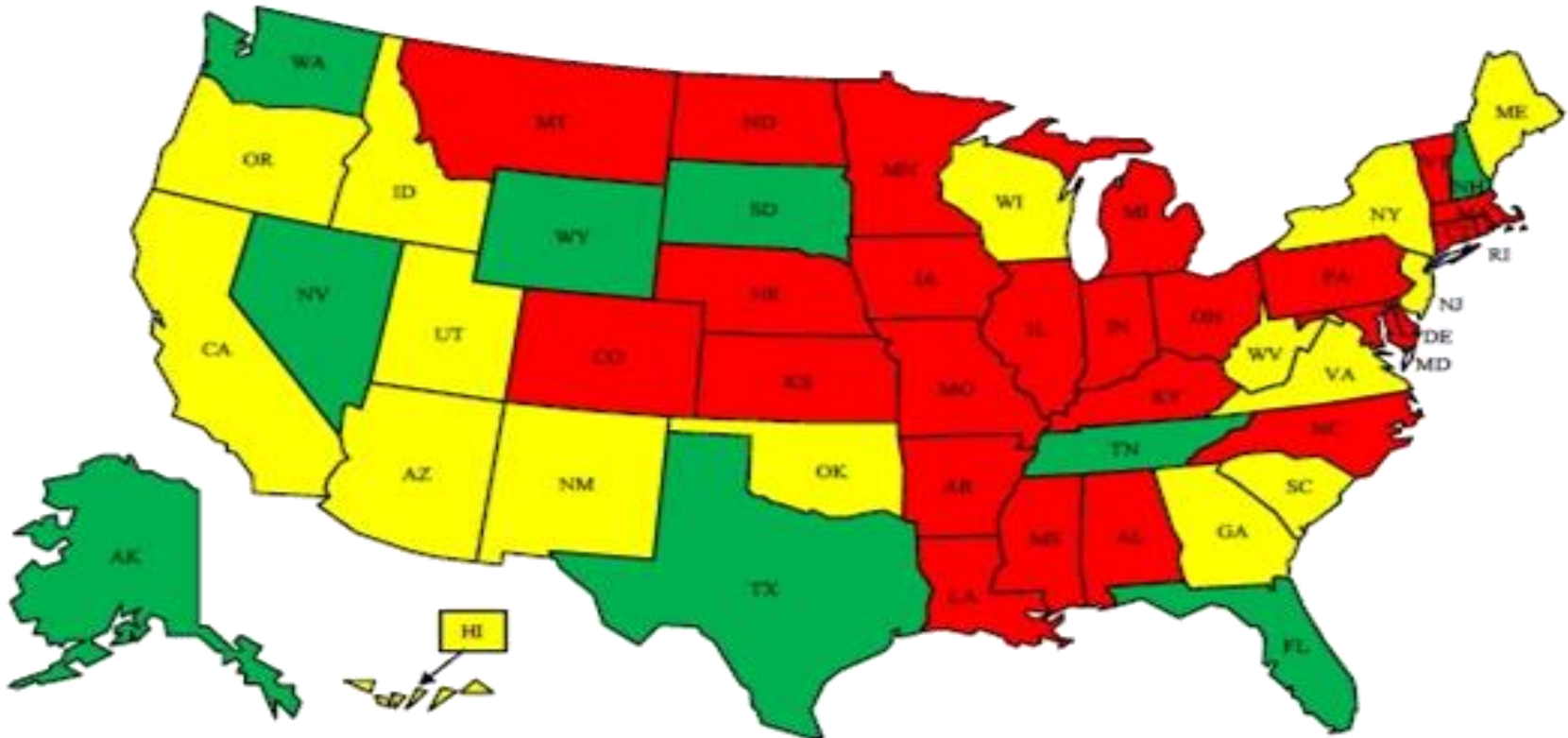
- Basic Withholding Rules
- Different Rules in Different States
- Who is the employer?
  - Employee vs. Independent Contractor
- Composite Returns
- Responsibility on Team?

# Special CA Rules for Entertainers

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- Publication 1024
  - “Nonresident Withholding—Entertainment Guidelines”
- 7% Withholding Requirement
- Exemptions from Withholding
- Composite Returns

# Nonresident Personal Income Tax Withholding

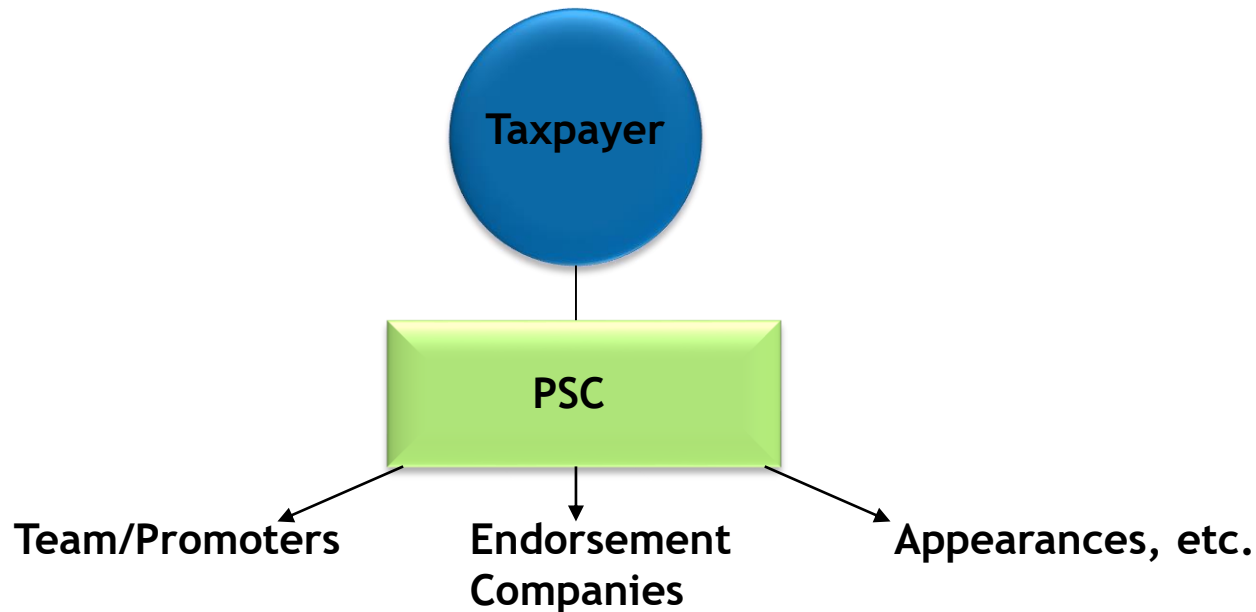


## Key

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

# Use of Personal Service Companies

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- Do they work?
- Duty day for entertainers?



# Attendance Validation #3



Here is the 3<sup>rd</sup> and FINAL attendance validation for today's webinar.

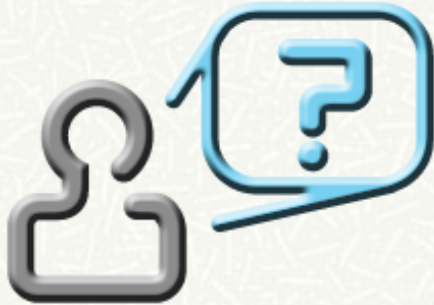
**signing bonus**



# Question and Answer Session

You can e-mail your questions to

**[seminars@wolterskluwer.com](mailto:seminars@wolterskluwer.com)**



*Please limit your questions to only topics discussed during today's presentation.*

# CONCLUSION

# Thank You for Attending Today's Seminar

If you have further questions or  
if you need additional assistance,  
please feel free to contact:



**Timothy P. Noonan**  
**HODGSON RUSS LLP**  
**716.848.1265**  
**[tnoonan@hodgsonruss.com](mailto:tnoonan@hodgsonruss.com)**

# Featured Upcoming Program



Steven G. Siegel  
J.D., LL.M. (Taxation)

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