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Minnesota Among First States to Ease Nexus Application for COVID-19 Telecommuters

Legal Update

04.22.2020

By Masha M. Yevzelman and David B. Tibbals

As social distancing methods and shelter-in-place orders during the COVID-19 pandemic have prompted many across the country to work from home, businesses have begun to wonder about the nexus ramifications of their newly-expanded telecommuting arrangements. On April 14, 2020, the Minnesota Department of Revenue became one of the first revenue authorities to provide guidance regarding how it would apply nexus standards to affected businesses.

Through answers to frequently asked questions posted to its website, the Department indicated that it “will not seek to establish nexus for *any business tax* solely because an employee is temporarily working from home due to the COVID-19 pandemic.” (Emphasis added.) It is unclear for what length of time the Department will abstain from seeking to establish nexus based on telecommuter presence.

At this time, the Department is part of a small group of state and local revenue authorities that have provided direction on this issue:

- Indiana will not assert nexus based on an employee’s relocation, as long as it is the “direct result of temporary remote work requirements arising from and during the COVID-19 pandemic health crisis.” Additionally, a taxpayer’s P.L. 86-272 protection will not be lost due to an employee’s need to telework from Indiana. This guidance is in effect while government work-from-home orders are in place or while an individual is subject to doctor’s orders plus 14 days.
- Maryland’s position is that its withholding requirements “are not affected by the current shift from working on the employer’s premises to teleworking because taxability is determined by the employee’s physical presence.”
- Massachusetts issued an emergency regulation indicating that the compensation of non-residents who work remotely from Massachusetts during the emergency will continue to be treated as Massachusetts source income subject to personal income tax.
- Mississippi will not assert income tax nexus or alter apportionment based on temporary changes in employee work locations “while temporary telework requirements are in place.”

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- New Jersey will not assert income tax nexus based on employees working from home “solely as a result of closures due to the coronavirus outbreak and/or the employer’s social distancing policy.”
- North Dakota will not assert income tax nexus on the basis that “employees are present in North Dakota in a temporary telecommuting capacity” because of “COVID restrictions and recommendations.” Additionally, North Dakota will exclude from the numerator of the payroll factor wages for telecommuters working in North Dakota on a temporary basis due to a “COVID related response.”
- Pennsylvania will not assert income tax or sales tax nexus based solely on employees working from home temporarily during the duration of Governor Tom Wolf’s Proclamation of Disaster Emergency.
- Washington, D.C., will not assert income tax nexus “solely on the basis of employees or property used to allow employees to work from home (e.g., computers, computer equipment, or similar property) temporarily located in the District during the period of the declared public emergency and public health emergency, including any further extensions by the Mayor.”

We expect that additional state revenue authorities will issue guidance describing how nexus standards will be applied during this time of widespread remote work. Our team continues to actively track tax impacts created by this challenging time. Please feel free to contact us to discuss this further.