

AMERICAN PAYROLL ASSOCIATION

April 17, 2020

Re: Request for COVID-19 Relief for Employees Temporarily Teleworking in the State

The American Payroll Association (APA) understands that state tax administrators are facing unprecedented challenges in navigating the economic impact of COVID-19, while fostering a supportive environment for the state's workforce and employers. We are writing to suggest one measure that state tax administrators could offer to substantially reduce the extraordinary burden brought about by the COVID-19 health crisis and travel restrictions enacted in most states: administratively apply the existing state law that relieves the state tax withholding burden for out-of-state disaster recovery workers to those teleworking in your state temporarily because of the COVID-19 health crisis.

The relief is for residents in your state that normally work in another state and have taxes withheld by their employer in the work state. APA believes that the individual tax burden will not change because of this request; i.e., affected individuals already file income tax returns in both their state of residence and work state. We are asking for the state to reduce the administrative burden on employers in accounting for work performed in the state from temporary teleworking.

About APA

APA is a nonprofit organization serving the interests of more than 20,000 payroll professionals across the United States, who are responsible for the administrative task of properly withholding and remitting state and federal taxes. APA's primary mission is to educate its members and the payroll industry about the best practices associated with paying America's workers while complying with applicable federal, state, and local laws and regulations. APA members are directly responsible for calculating wages and tax withholding for their employers.

Flexibility in Enforcement Is Necessary During a National Emergency

The issue relates to longstanding income sourcing rules for workers that are temporarily working in a state other than their primary work location. Absent an affirmative announcement from your agency, many employers would be required to change tax withholding arrangements for employees who are now required to work from home, when their home is in a different state.

States have diverse rules that require employers to withhold income taxes and report employees, generally based on where work is performed. In the case of temporary assignments, special rules and thresholds apply, often based on the number of days that a worker is present in the state (e.g., 14, 15 or 30 days) and/or an earnings threshold.

Because of the COVID-19 health crisis, most states have ordered employees in many industries to work from home, thereby prohibiting travel to the normal workplace. To the extent that employees normally commuted across state lines, these temporary travel restrictions could trigger legal requirements to change the tax withholding settings for affected employees in payroll systems.

The forecast for the duration of this health crisis is unclear, but work-from-home orders seem likely to persist beyond the threshold days/amounts that would normally require recognition and changes to withholding.

We ask that the state's tax administrators suspend the temporary presence sourcing rules for income tax withholding for the duration of the crisis. Among the many other concerns that businesses are addressing at this time, it would be very helpful if state tax authorities would announce that employers are not required to change the state to which employee withholding is directed if the normal base of operations is expected to be restored when permitted, just as state law allows for out-of-state employers during disaster recovery efforts.

We understand that your state has adopted a law permitting employees to work in the state in a disaster recovery or similar recognized crisis (such as the COVID-19 pandemic), without thereby invoking burdensome income tax obligations. It is our hope that these laws may permit the tax administrator to announce that there will be no adverse income tax impact for workers teleworking in the state temporarily due to the COVID-19 health crisis.

Other examples of state announcements or enactments on this matter follow. APA encourages all state tax administrators to consider similar announcements to help reduce the extraordinary stresses that businesses are facing today.

1. New Jersey Division of Taxation

PAYROLL TAX QUESTIONS AND ANSWERS

As our Federal and State governments continue to react to the COVID-19 pandemic in real-time with a primary focus on limiting travel, large gatherings and the movement of our citizens, many businesses are executing contingency plans which require their employees to work remotely where possible. The reassignment of work locations and/or the displacement of workers due to health safety precautions raises many employer and employee concerns.

EMPLOYER WITHHOLDING TAX

New Jersey sourcing rules dictate that income is sourced based on where the service or employment is performed based on a day's method of allocation. However, during the temporary period of the COVID-19 pandemic, wage income will continue to be sourced as determined by the employer in accordance with the employer's jurisdiction.

Would the Division advise employers in your state to not change the current work state set-up for employees in their payroll systems who are now telecommuting or are temporarily relocated at an out-of-state employer location?

The Division would not require employers to make that change for this temporary situation. However, employers must consider their unique circumstances and make that decision.

2. Mississippi

The Mississippi Department of Revenue recently announced that during the period of the COVID-19 national emergency it will not require employers to modify income tax withholding for employees are temporarily on telework assignments within the state.

3. Ohio (Legislation)

SECTION 29... during the period of the emergency declared by Executive Order 2020-01D ... and for thirty days after the conclusion of that period, any day on which an employee performs personal services at a location, including the employee's home, to which the employee is required to report for employment duties because of the declaration shall be deemed to be a day performing personal services at the employee's principal place of work. [Ohio H.B. 197].

Thank you for your consideration. We would be pleased to discuss this further if it would be helpful.

Sincerely,



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