Fiscal Implications of Remote Work

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Agenda

› Background and NCSL’s Work
› Remote Work State and Local Tax Issues
› Mobile Workforce/Business Travel
Overview of NCSL Remote Work White Paper

- As explained in the White Paper, remotework (and mobile employees) directly affect many state and local tax types.
  - Remote work also indirectly impacts revenues generated by state and local taxes, like sales taxes and property taxes - those indirect impacts are not addressed in the White Paper due to space limits.

- These impacts may have significant revenue impacts on states and local governments.

- Because of remote work’s broad impact on taxes, the Task Force on State and Local Taxes formed a Drafting Committee, which includes legislators, business representatives, tax administrator representatives, and other tax policy experts.
Remote Work SALT Issues

› State and local personal income taxes

› Business taxes
  – Withholding
  – Unemployment insurance taxes and other employment taxes
  – Credits and incentives
  – Corporate income taxes
  – Sales and use taxes
  – Local taxes (income, gross receipts, and payroll-based)
  – Personal property taxes
  – Registration and compliance

› Non-tax issues
“Convenience” Rule Developments

› What?
  – In general, if the employee works from home for their own convenience, and not for a “bona fide” business purpose, the workdays at home will be treated as days worked at the employer’s location

› Why?

› Where?
  – 6 states (NY, NJ, PA, DE, NE, CT) have some form of a convenience rule
  – Localities also adopt convenience tests, *e.g.*, Philadelphia, St. Louis
  – Some state tax agencies have tried to adopt a convenience test, but have been rejected either through legislation (Arkansas) or litigation (New Mexico)
    – Oregon “executive and officer managerial services” rule
    – Alabama Tax Tribunal rulings

› Litigation and legislative responses
When is a Nonresident Employer Required to Withhold?

Important note: These don’t necessarily align with an employee’s filing requirements.

- **Nonresident employee is subject to withholding on the first day of travel into the state**
- **Nonresident employee is subject to withholding after reaching a specific threshold**
  - **AZ & HI**: 60 days for withholding only – employee could be subject to tax based on first day
  - **IL**: 30 working days (2019)
  - **WV**: 30 days (2021)
  - **LA**: 25 days (2022)
  - **IN**: 30 working days (2023)
  - **MT**: 30 days (2023)
  - **VT**: 30 days (per DOT guidance)
  - **ND, UT**: 20 days (MTC Model)

No general state personal income tax
MTC AND COST MODEL PROVISIONS

Both organizations have somewhat similar provisions but also have key differences.

› Similarities:
  – Both generally center on a day threshold
  – Both exclude professional athletes, professional entertainers, and persons of prominence paid on a per-event basis
  – Both have a reciprocity provision for states providing a similar exclusion to encourage other states to enact a similar law

› Differences:
  – COST uses 30 days and MTC uses 20 days
  – MTC also has limits tied to IRC § 416 key employees (generally an employee making over $150K per year)
  – MTC excludes construction workers