

Fiscal Implications of Remote Work

2023 NCSL Fiscal Institute Symposium
November 17, 2023
Miami, Florida

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NATIONAL CONFERENCE OF STATE LEGISLATURES

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?

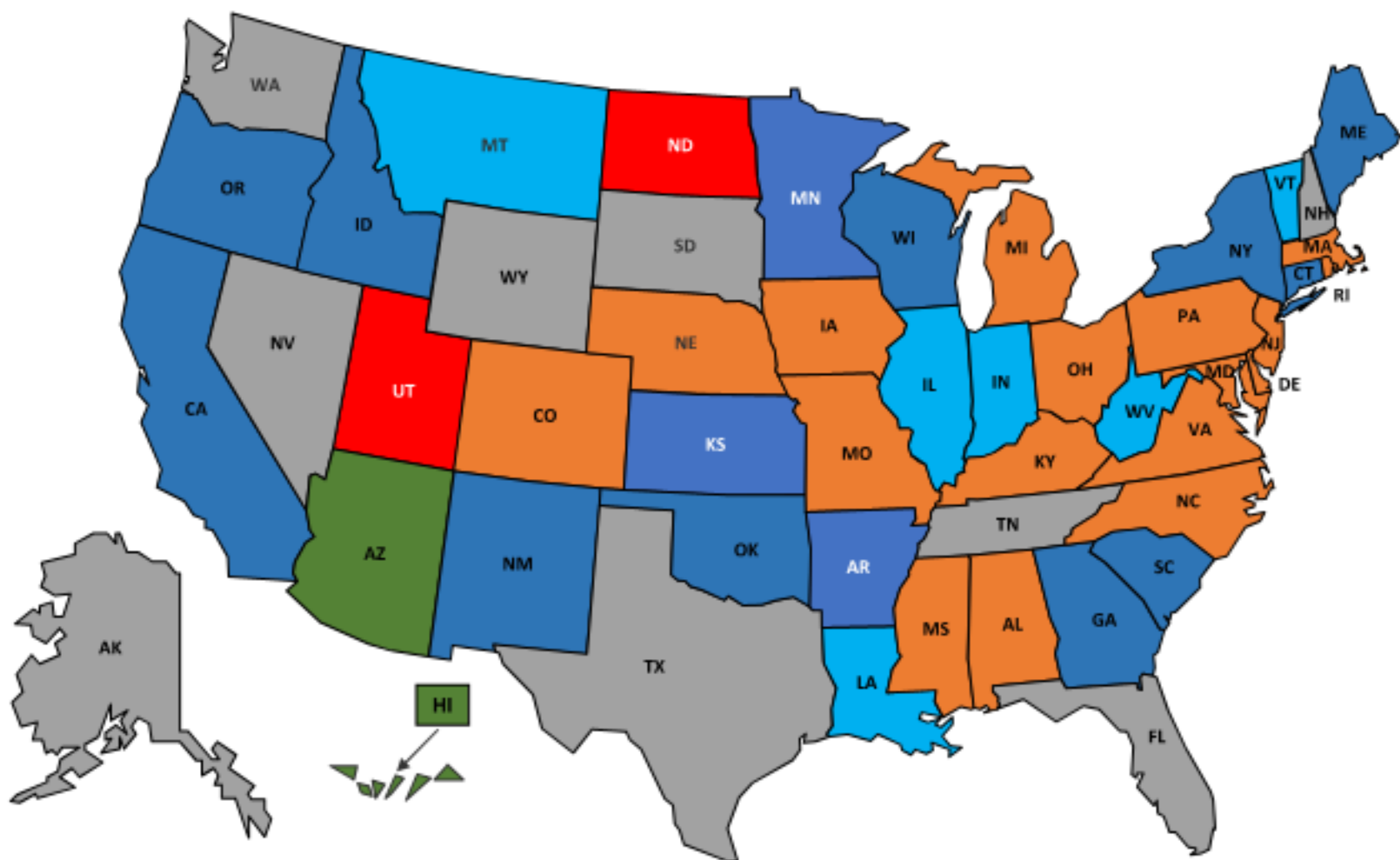
› Where?

- 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