



The Implication of a Teleworking Future on State Tax Systems

NCSL Tax Working Group

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Agenda

- **Overview of Policy Issues Facing Employees, Employers, and CPA's**
- **Multistate Employers – Legal and Compliance Concerns**
- **Wisconsin's Approach – A Case Study**
- **Q & A – Further Discussion**

Spring Council 2021

REMOTE WORKFORCE: ISSUES FOR CPAs



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Lead Manager – State Regulation and Legislation

Thrive + adapt

Will Telecommuting Employees Create Nexus?

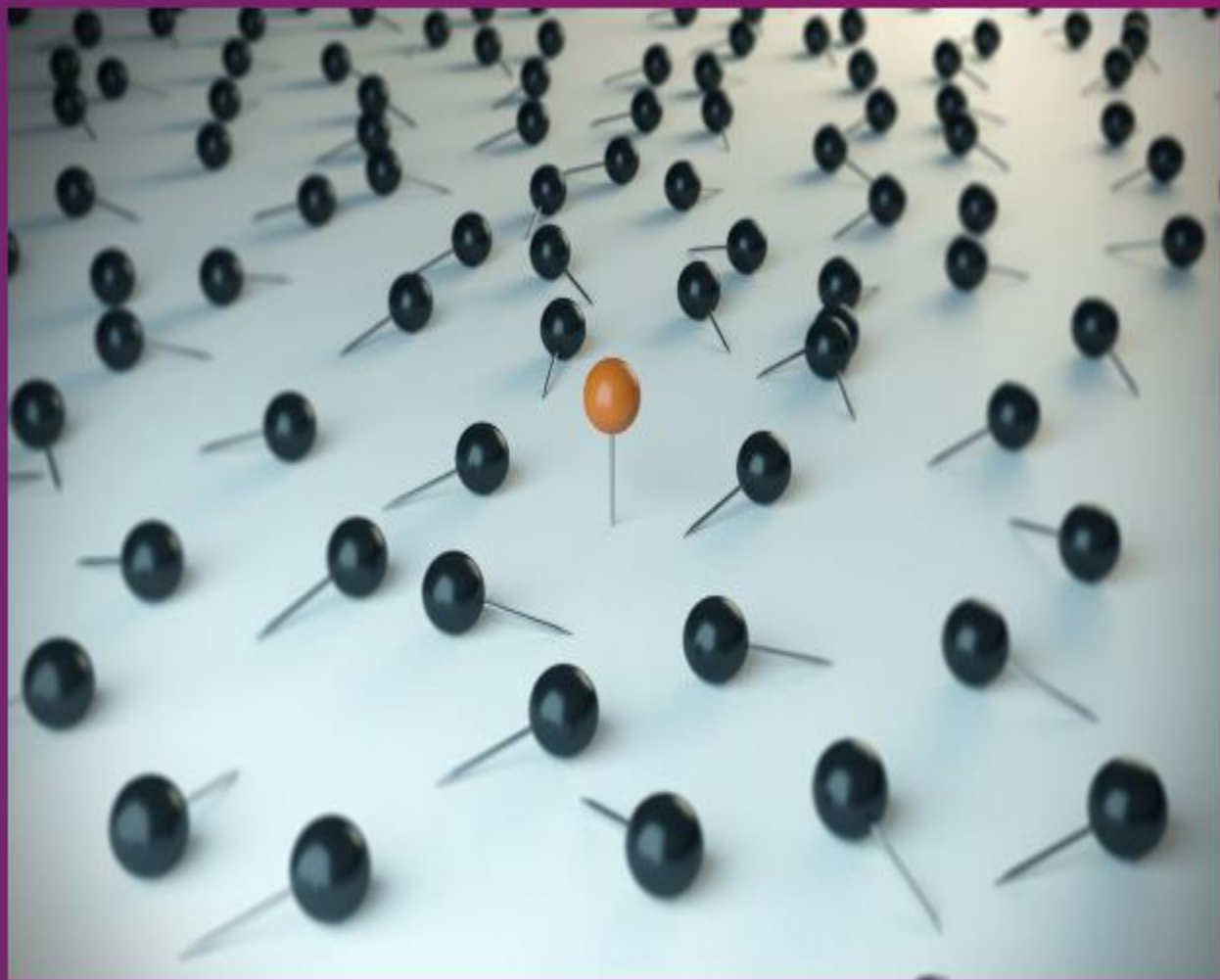


NOTE: DC and NYC are treated as states for purposes of this chart. OH, NV, SD, WA, and WY do not impose a corporate tax based on income. CO, DE, MI, NY, NYC, OK, and SC did not participate in this portion of the survey. As a result, these 12 states are not included in this chart.

COURTS' OPINIONS



TAX COLLECTION ISSUES



IMPLICATIONS FOR CPAs



A Teleworking Future

Multistate Employers – Legal and Compliance
Concerns

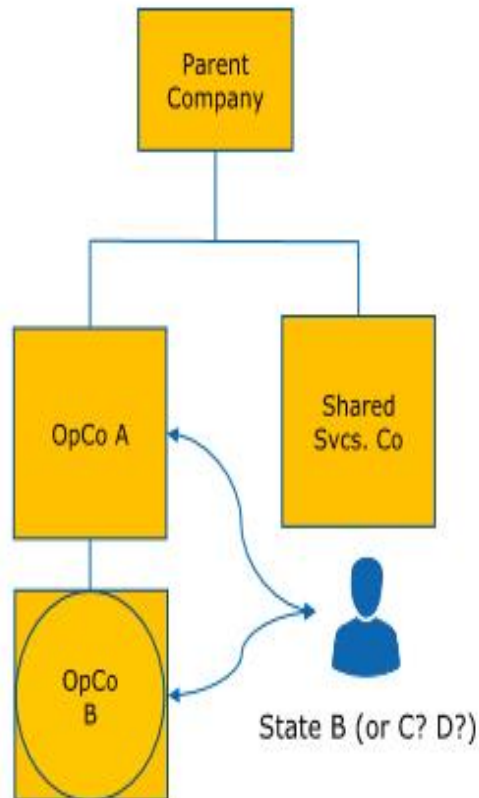
Employer Concerns – Multistate and Multinational



The Conundrum



What is the Multistate Remote Work Problem?



- A remote FTE performs their normal everyday work virtually, from outside of the office, while outside the state (or locality) of their employer
- Employee remains on employer's (affiliate's) payroll
- Many more employees likely to work remotely in NE Corridor, Mid-Atlantic, Gulf Coast, or large metro areas near state lines (e.g., Portland, Charlotte, Kansas City)
- Teleworking from resident state, long-term rental/vacation home, or visiting relatives/friends in another state

Consequences of Remote Work



Litigation Related to Remote Work

— Ohio Municipalities

- *See, e.g., Morsy v. Gentile (City of Cleveland) et al.*, No. CV21-946057, Cuyahoga County Court of Common Pleas (filed April 2021).

— City of St. Louis

- *Boles, et al., v. City of St. Louis*, No. 2122-CC00713, St. Louis City. Cir. Ct. (filed April 2021).
- Senate Bill 908

— New York State – Convenience Test Redux

- *Zelinsky v. Dep't of Tax'n and Finance*, Div. of Tax App. No. 830517 (filed July 2021).

— Philadelphia Wage Tax

- *Zilka v. City of Philadelphia*, Dkt. 1063 C.D. 2019, 1064 C.D. 2019, Pa. Commw. Ct., Jan. 7, 2022.

Policy Concerns

- Corporation/Business Activity Tax Issues
- Uniform Withholding Thresholds
 - Existing “Bright-Line” Thresholds
 - MTC Model
 - COST Model
- Simplified Sourcing of Multistate Wage Income
 - “Localization of service”
- Credits and Incentives
 - Employer-level
 - Employee-level, e.g., Louisiana’s “Digital Nomads”, La. R.S. § 47.297.16.

Federal Legislation

- Multi-State Worker Tax Fairness Act (S. 1887 2021)
 - Federal preemption of the convenience of the employer test
 - Introduced by Democrat Sens. from CT, NH and WI

- Mobile Workforce Simplification
 - State may not impose tax or withholding obligation) on nonresident unless present and working in the state for 30 days in a year
 - Alternative to employer to use a time and attendance reporting system to assign wages to a state
 - Over 30 days, liability due on all days in state
 - Does not address convenience of employer

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Mission

Strengthen Wisconsin through fair tax and lottery administration, while educating and serving the public, our customers and communities.

Vision

To be the premier agency in providing innovative, accessible resources, and exceptional customer service built on a foundation of trust, inclusivity and creativity.

Values

- Integrity
- Innovation
- Inclusivity
- Knowledge
- Empathy
- Security



National Conference of State Legislatures State and Local Taxation Working Group

Peter Barca
Secretary

Wisconsin Department of Revenue

May 18, 2022

Agenda

- Remote work tax considerations
 - Employees
 - Employers
 - Tax agency challenges of remote workforce

Tax Considerations for Telecommuting Employees

Telecommuting – Employee's Tax Considerations

- Are wages taxable to WI and another state?
- Is the employee required to file income tax returns in WI and another state?
- Is the employee required to make estimated income tax payments if the employer does not withhold?

WI Residents Working Entirely from WI Home for Out-of-State Employers

- All wages are taxable to WI (sec. 71.04(1)(a), Wis. Stats.)
- If out-of-state employer doesn't withhold WI tax, WI resident may have to make estimated WI income tax payments
- WI resident may have to file income tax return in another state (depending on other states' laws) – this is not common since employee is not physically present in the other state
- WI residents are allowed a credit for taxes paid to another state (sec. 71.07(7), Wis. Stats.)

WI Resident Working Entirely or Partially in Another State

- All wages are taxable to WI (sec. 71.04(1)(a), Wis. Stats.)
- If out-of-state employer doesn't withhold WI tax, WI resident may have to make estimated WI income tax payments
- WI resident may have to file income tax return in another state (depending on other states' laws)
- WI residents are allowed a credit for taxes paid to another state (sec. 71.07(7), Wis. Stats.)

Nonresidents Working Entirely from Out-of-State Home for WI Employers

- Wages are not taxable to WI if the services are performed by the nonresident in another state
- Nonresident would not file WI income tax return (assuming these wages are their only source of income)

Nonresidents Working Entirely or Partially in Wisconsin

- Generally, wages paid for services performed in WI are taxable to WI
- Services are performed in WI if the employee is physically present in WI
 - Example: A MN resident works 40% of the time in WI and 60% of the time from their home in MN. Wages paid for the services performed in WI (40% of the wages) are taxable to WI.
- Reciprocity is an exception to this general rule:
 - Wages earned by residents of Illinois, Indiana, Kentucky, or Michigan for services performed in WI are not taxable to WI. These nonresidents are not required to file WI income tax returns (assuming these wages are their only source of income in WI)

WI Income Tax Return Filing Requirements

- Residents of WI
 - The requirement to file a WI income tax return depends on factors such as: filing status, age, and gross income
 - Example: 2021 tax year, Single, Under Age 65 – must file if gross income is \$11,900 or more
 - See Form 1 instructions for more details
- Nonresidents of WI
 - In general, nonresident must file WI income tax return if gross income (or the combined gross income of you and your spouse) from WI sources (e.g., wages performed in WI) is \$2,000 or more

Tax Considerations for Employers of Telecommuting Employees

Telecommuting – Employers Tax Considerations

- Do the telecommuting employees create nexus for the employer in multiple states?
- If so:
 - Is the employer required to withhold for multiple states?
 - Is the employer required to file a income/franchise tax returns in multiple state?

WI Requirements for Out-of-State Employers

- Out-of-state employers with employees working remotely in WI generally creates nexus in WI
- Out-of-state employers with nexus in WI are required to:
 - File WI business income/franchise tax returns
 - Withhold WI tax from wages paid to employees
 - Withholding not required if nonresident wages in WI are less than \$1,500 in calendar year
 - File Forms W-2 with WI
 - May be required to collect and remit WI sales/use tax – see "retailers engaged in business in this state" in sec. 77.51(13g), Wis. Stats.

Temporary Nexus Relief during COVID-19 Pandemic

- Pandemic nexus relief: March 13, 2020 through December 31, 2021
- Wisconsin will not consider an out-of-state business to have nexus in WI during the pandemic if its only WI activity is having an employee working temporarily from the employee's home
- If out-of-state business does not have nexus, they would not be required to file WI business income/franchise tax returns or withhold WI tax from employee wages
- This relief did not change income tax requirements for employees:
 - WI resident employees – all income is taxable
 - Nonresident employees – wages for services performed in WI is taxable

Other State Requirements for WI Employers

- WI employers with employees working remotely in another state generally creates nexus in the other state
- WI employers with nexus in another state may be required to:
 - Filing business income/franchise tax returns in the other state
 - Withhold other states' tax from wages paid to employees
 - File Forms W-2 in other states

Challenges of a Remote Workforce

Challenges of a Remote Workforce

- Recruitment and retention of employees
 - Wisconsin businesses (and State of Wisconsin) are allowing telecommuting to compete with out-of-state employers
 - WI may benefit from talented employees outside WI
 - WI could lose talented employees to out-of-state employers
- Employers (including states) likely have more filing requirements in multiple states
 - Withholding
 - Business income/franchise tax returns

Remote work considerations

- Remote work options limited by job function
 - Auditors/agents v mail room
- Supervisors need training to supervise remote/hybrid workforce
 - Technology tools, stand-up meetings
- Collaboration is still necessary
 - Remote work can be more isolating
- Mentoring of talent - younger talent in particular
 - Younger/newer workers need guidance
- Re-organize office spaces to take advantage of efficiencies
 - Office sharing, hoteling, parking

Benefits of offering remote work

- Remain competitive with recruitment and retention
- Agencies can use remote work options as a retention tool

Questions

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