

## Policy Considerations and Best Practices

### **Personal Income Tax**

- Prior to adopting a convenience test, the Task Force recommends that state policymakers may consider all aspects of the “convenience of the employer” test provided by the employee’s resident state (or other remote work state) and/or the state where the employer’s office is located, as relevant to the personal income taxation of wages and correlative employer withholding obligations. In this regard, policymakers ought to consider the other tax types that compensate the employer’s state for its in-state presence, such as corporate income/business taxes, use taxes, property taxes.

Further, when evaluating the impact of a convenience test, this policy consideration intends to mitigate the difficult decision facing state policymakers to either provide a resident credit for taxes paid (and thereby harming the state treasury) or denying such credit (and thereby double taxing their constituents).

- States may consider entering into reciprocity agreements with other states for personal income tax and employer wage withholding purposes, to the extent they have not done so already. These agreements simplify tax enforcement and compliance by taxing individuals on a residence-basis.

### **Employment Taxes**

- States may consider measures that would hold employers harmless from improper withholding so long as the employer collects a form, signed by the employee and without actual knowledge to the contrary, that the employee’s resident state and/or source state withholding is accurate. States, like New York, that have implemented such forms, have streamlined audit and enforcement processes for taxpayers and revenue administrators.
- It is suggested that NCSL (or the states) request guidance from the Office of Unemployment Insurance in DOLETA on the application of the localization of service rules as relevant to remote work arrangements.

### **General Business Tax Issues**

- It is suggested that states and localities, as relevant, consider a streamline agency processes by adopting online, multi-agency registration forms and licensing requirements. Further, clear guidance as to registration requirements should be issued addressing, e.g., when an out-of-jurisdiction employer whose only contact with the state or locality is a remote worker who does not hold their workplace/home out as an official employer location.
- It is suggested that states consider adopting *de minimis* rules, including but not limited to “Section 18” relief, for remote workers in the state as a single remote worker may improperly reflect the employer’s business in the state.
- States may consider conforming to federal provisions most relevant to remote work to ease compliance, facilitate enforcement, and increase predictability.

- It is suggested that states consider allowing certain “small sellers,” however defined, to retain the benefit and certainty of *Wayfair* thresholds based on a *de minimis* number of remote workers in the state.
- It is suggested that taxing jurisdictions could allow businesses to report personal property within the state to a single location, whether headquarters or the location where most employees are located. Such single return location would facilitate compliance and maintain the jurisdictions’ tax base.
- Similar to the above, it is suggested that the application of local payroll-based to remote workers be evaluated by balancing the “protection, opportunities, and benefits” provided by the employer’s and the employee’s locations, respectively, as well as ease of administration and compliance.

It is also suggested that localities consider whether the changes to the federal tax law affecting employee benefits significantly deviate from local policies such that their tax laws should not conform to the changes. For instance, some cities, such as Washington, D.C., New York City, and San Francisco, require employers to maintain transportation programs for their employees, and the repeal of employer deductions for the costs of those programs may frustrate local policy. Localities (and states) should also consider