Some states have issued guidance regarding teleworking and income sourcing (updated 09/21/2020)

Summary: Due to the coronavirus (COVID-19) public health emergency, governors throughout the country have ordered the temporary closure of non-essential businesses. Also, employers anxious to not place their employees at risk while continuing to operate their businesses have asked employees to work remotely from their homes (also known as telework or telecommute). However, an employee who teleworks may reside in a different state than the employer’s usual place of business. The issue of wage income sourcing for non-resident workers who are working from home (WFH) has been addressed by some states while other states are currently examining the issue.

Here is the latest information that we have.

Alabama. The Alabama Department of Revenue (ADOR) has updated its ADOR Operation Updates Due to COVID-19 to provide guidance regarding employees who are teleworking (working remotely) during the coronavirus (COVID-19) public health emergency. ADOR states that generally, all income is taxable for Alabama residents, regardless whether the work is performed in the state or out-of-state. However, ADOR clarifies that withholding requirements for businesses will not change based on an employee who is temporarily teleworking within Alabama due to COVID-19. ADOR will not consider temporary changes in
an employee’s physical work location during periods in which temporary telework requirements are in place due to the pandemic to impose nexus or alter apportionment of income for any business.

**Alaska.** Alaska does not have a state income tax.

**Arizona.** No guidance at this time.

**Arkansas.** No guidance at this time.

**California.** No guidance at this time.

**Colorado.** A spokesperson from the Colorado Department of Revenue (CDOR) told *Thomson Reuters* that the CDOR is not currently evaluating changes to the sourcing of wage income for nonresident individuals. Colo. Code Regs § 39-22-109(3)(b)(i) generally requires a nonresident to apportion wage income to Colorado on the basis of Colorado work days to total work days.

**Connecticut.** No guidance at this time.

**Delaware.** A spokesperson for the Delaware Division of Revenue (DOR) has told *Thomson Reuters* that the DOR is currently examining this issue. Guidance will not be released until at least next week.

**District of Columbia.** No guidance related to withholding tax, however, the Office of Tax and Revenue (OTR) has issued an alert regarding franchise tax nexus for when workers are teleworking from other states. OTR will not seek to impose corporate franchise tax or unincorporated business franchise tax nexus solely on the basis of employees or property used to allow employees to work from home (e.g., computers, computer equipment, or similar property) temporarily located in D.C. during the period of the declared public emergency and public health emergency, including any further extensions of that period by the Mayor.

**Florida.** Florida does not have a state income tax.

**Georgia.** The Georgia Department of Revenue (DOR) has added nexus determination and withholding tax information to the frequently asked questions (FAQs) on Coronavirus Tax Relief. DOR will not use someone’s relocation, that is the direct result of temporary remote work requirements arising from and during the coronavirus (COVID-19) pandemic, as the basis for establishing Georgia nexus or for exceeding the protections provided by PL 86-272 for the employer of the temporarily relocated employee. Also, if the employee is temporarily
working in Georgia, wages earned during such time period would not be considered Georgia income, so the company is not required to withhold Georgia income tax. The temporary protections will extend for periods of time when the employee is working at home because: (1) there is an official work from home order issued by an applicable federal, state or local government unit; or (2) pursuant to the order of a physician in relation to the COVID-19 outbreak, or due to an employee’s actual diagnosis of COVID-19. Additionally, the subsequent 14 days are included in the time period to allow for a return to normal work locations. If the person remains in Georgia after the temporary remote work requirement has ended, the normal rules for determining nexus, the employee’s wages, and the employer’s income tax withholding obligation will apply. A company may not assert that solely having a temporarily relocated employee in Georgia, under the circumstances described above, creates nexus for the company or exceeds the protections of PL 86-272 for the company. Wages paid to a nonresident employee that normally works in Georgia but who is temporarily working in another state, under the circumstances described above, would be considered Georgia wages and the employer should continue to withhold Georgia income taxes [DOR, Coronavirus Tax Relief FAQs, updated 05/01/2020].

**Hawaii.** No guidance at this time.

**Idaho.** A spokesperson for the Idaho State Tax Commission (STC) told Thomson Reuters that the STC has not addressed this issue and will evaluate each situation on a case-by-case basis.

**Illinois.** The Illinois Department of Revenue (DOR) issued an informational bulletin to out-of-state employers, whose employees are Illinois residents, now working from home due to the coronavirus (COVID-19) crisis. These employees may now be subject to Illinois withholding requirements since employee compensation is subject to Illinois withholding if an employee has performed normal work duties in Illinois for more than 30 working days. The employer may be required to register with DOR and withhold Illinois income tax from the employee. This bulletin does not impact out-of-state employers from states with a reciprocal agreement with Illinois, which include Iowa, Kentucky, Michigan and Wisconsin. Most employers must register with the Department electronically using MyTax Illinois or via mail using Form REG-1 (Illinois Business Registration Application). DOR will waive penalties and interest for out-of-state employers who do not withhold Illinois income taxes when the sole reason the employee is working from home is due to the COVID-19 crisis. Employees will be required to make estimated tax payments if they expect their tax liability to exceed $1,000 after subtracting Illinois withholding and credits. Employees should complete and return a Form IL-
W-4 to employers to ensure proper Illinois tax is withheld [DOR, Information Bulletin No. FY 2020-29, 05/01/2020].

**Indiana.** In response to the new remote work requirements associated with the COVID-19 pandemic, the Indiana Department of Revenue (DOR) will not use someone’s relocation, that is the direct result of temporary remote work requirements arising from and during the COVID-19 pandemic health crisis, as the basis for establishing Indiana nexus or for exceeding the protections provided by Public Law 86-272 for the employer of the temporary relocated employee (see COVID-19 FAQs). The temporary protections provided under this guidance will extend for periods of time where: (1) there is an official work from home order issued by a federal, state or local government unit, or (2) pursuant to the order of a physician in relation to the COVID-19 outbreak or due to an actual diagnosis of COVID-19, plus 14 days to allow for return to normal work locations. If the person remains in Indiana after the temporary remote work requirement has ended, nexus may be established for that employer. Likewise, an employer may not assert that solely having a temporarily relocated employee in Indiana under the circumstances described above creates nexus for the business or exceeds the Public Law 86-272 protections provided to the employer.

**Iowa.** The Iowa Department of Revenue (DOR) has issued guidance on whether the presence of employees temporarily telecommuting from within Iowa solely as a result of the COVID-19 emergency establish Iowa income tax nexus for a business that does not otherwise have nexus in Iowa. DOR states that in light of the unusual circumstances presented by the COVID-19 pandemic in which workers are required or strongly encouraged by state and federal governments to remain at home and limit social contact, DOR does not believe that the presence of employees who normally work outside of Iowa, but who are now working remotely from within the state solely as a result of the COVID-19 pandemic state of emergency represents the same type of business activity on the part of the employer contemplated by the law that would create nexus. Thus, while Iowa’s state of emergency in response to COVID-19 remains in effect, DOR will not consider the presence of one or more employees working remotely from within Iowa solely due to the COVID-19 pandemic, by itself, sufficient business activity within the state to establish Iowa corporate income tax nexus. Nor does DOR consider such presence by non-sales employees due to the pandemic sufficient, by itself, to cause a corporation to lose the protections of Public Law 86-272. The position only applies to states of emergency declared in response to COVID-19 and does not extend to other facts and circumstances [DOR, COVID-19 Income Tax FAQs, updated 05/15/2020].

**Kansas.** No guidance at this time.
**Kentucky.** The Kentucky Department of Revenue (DOR) has issued a set of Frequently Asked Questions regarding the coronavirus (COVID-19) pandemic that address tax issues related to employees who are telecommuting due to the health emergency. For Kentucky state income tax purposes, employers employing Kentucky residents, and/or nonresidents who reside in states with which Kentucky has a reciprocal agreement, will not need to change their current withholding practices during the period when these employees are working from home. These employees’ Kentucky state income tax obligations remain unchanged by restrictions related to the COVID-19 public health emergency. With respect to whether the presence of an employee working in Kentucky due to restrictions related to the COVID-19 public health emergency creates a nexus for tax purposes in Kentucky, the FAQs states that DOR will continue reviewing Kentucky state income tax nexus determinations on a case-by-case basis [Kentucky Covid-19 Tax Relief: Frequently Asked Questions, 07/16/2020].

**Louisiana.** No guidance at this time.

**Maine.** No guidance at this time.

**Maryland.** The Maryland Comptroller has updated guidance on employer withholding requirements for teleworking employees due to the coronavirus (COVID-19) health emergency. Generally, the Comptroller's Office does not intend to change or alter the facts and circumstances it has consistently used to determine nexus or income sourcing. The Comptroller's Office will recognize the temporary nature of a business interim workplace model and employee deployment in light of and during the current health emergency and will not use these temporary measures to impose business nexus; to alter the sourcing of business income; or to impose additional withholding requirements on the employer. Previously, the Comptroller's Office stated it would consider the temporary nature of a business interim workplace model and employee deployment in light of the current health emergency in making a nexus determination; whether the business correctly sourced income; and whether the business properly withheld and reported employee state withholding [Maryland Tax Alert 05-04-20, Maryland Comptroller's Office, 05/04/2020].

**Massachusetts.** The Massachusetts Department of Revenue has adopted emergency regulation 830 CMR 62.5A.3 on sourcing rules for income earned by a non-resident employee who telecommutes on behalf of an in-state business from a location outside the state due to the coronavirus (COVID-19) state of emergency in Massachusetts. Income of a non-resident derived from a trade or business including any employment, carried on in the commonwealth is sourced to Massachusetts. Under this rule, all compensation received for personal services performed by a non-resident who, immediately prior to the Massachusetts
COVID-19 state of emergency, was an employee engaged in performing such services in Massachusetts, and who during such emergency is performing such services from a location outside Massachusetts due solely to the Massachusetts COVID-19 state of emergency, will continue to be treated as Massachusetts source income subject to personal income tax and personal income tax withholding. A resident employee who is suddenly working in Massachusetts due to the COVID-19 pandemic who continues to incur an income tax liability in another state due to that state’s sourcing rule will be eligible for an income tax credit for taxes paid to that other state. The employer of the employee is not obligated to withhold Massachusetts income tax to the extent the employer remains required to withhold income tax with respect to the employee in the other state. The regulation is effective for the period beginning March 10, 2020, and ending on the date when the Governor gives notice that the state of emergency declared in Executive Order 591 is no longer in effect.

**Michigan.** In FAQs posted on the Michigan Department of Treasury (DOT) website on April 1, the DOT confirmed that if an employer is located in a Michigan city that imposes a city income tax, the wages of a nonresident who telecommutes from home is not subject to tax on wages earned while telecommuting from a location outside the city. For example, Bill lives in Grand Ledge, Michigan and primarily works from his office in Lansing. His income is generally taxable by the city of Lansing. On occasion, Bill works (telecommutes) from his home in Grand Ledge. The income Bill earns from the hours he works from his home are not taxable by the city of Lansing. The nonresident city income tax return includes a schedule by which employees can allocate wages between taxable city income and nontaxable city income based on either days or hours worked. Employers are responsible for providing employees with a letter stating the dates that employees were directed to work from home. Employees should retain a copy of both documents for their records even though they are not required to submit a log of hours and employer letter with their tax return. The DOT notes that the City Income Tax Act defines taxable wages as compensation for services rendered as an employee for work done or services performed in the city in support of its conclusions [Mich. Comp. Laws Ann. 141.613(a)].

**Minnesota.** The Minnesota Department of Revenue (DOR) has announced that it will not seek to establish nexus for any business tax, including withholding tax, solely because an employee is temporarily working from home due to the COVID-19 pandemic. The DOR will not impose added individual income tax or payroll withholding tax requirements for employees who ordinarily work outside the state but are temporarily telecommuting from a Minnesota location due to COVID-19. For Minnesota residents, there are no additional payment or withholding requirements. They are already taxed on income earned inside and outside the state. For non-Minnesota residents, the apportionment of their income may
change based on the number of days they physically work in Minnesota [DOR, COVID-19 FAQs for Individuals, 04/14/2020; DOR, COVID-19 FAQs for Businesses, 04/14/2020].

**Mississippi.** The Mississippi Department of Revenue (DOR) has issued a release stating that during the COVID-19 national emergency, Mississippi will not change withholding requirements for businesses based on an employee's temporary telework location. Mississippi residents are taxable on their total income, regardless of where they work. However, new withholding requirements will not be imposed on employers. Mississippi will not use any changes in the employee's temporary work locations due to the pandemic to impose nexus or alter the apportionment of income for any business while temporary telework requirements are in place [Mississippi Department of Revenue Responds to Requests for COVID-19 Relief, 03/26/2020].

**Missouri.** The St. Louis Collector of Revenue has provided teleworking guidance for employers and workers. Employees who have been working remotely due to COVID-19 or in conjunction with the acting City of St. Louis Health Commissioner's Order should be treated as working at their original, principal place of work for purposes of the St. Louis Earnings Tax. The acting Health Commissioner's earlier Order required all non-exempt City of St. Louis employers to "facilitate employees working remotely" but was completely neutral to the location of the remote work site. It did not order employees to work outside the City nor require any individual who is employed outside the City, to work remotely in their City home. Employers should continue to withhold on those employees in the same manner as they did prior to the temporary relocation of their employees. Therefore, days worked out of the city due to a temporary reassignment caused by COVID-19 or the acting Health Commissioner's Order may not be included in the Non-Residency Deduction formula on Form E-1R when claiming a refund for tax year 2020.

**Montana.** No guidance at this time.

**Nebraska.** The Nebraska Department of Revenue (DOR) has updated its web page on frequently asked questions about income tax changes due to the coronavirus (COVID-19) pandemic. Specifically, DOR alerts employer/payors of withholding tax that they do not need to change employee work locations although employees may be telecommuting or have been temporarily relocated to a work location either in Nebraska or in another state due to COVID-19. The change in work location is not required for the emergency period currently March 13, 2020 through January 1, 2021 [DOR, Frequently Asked Questions about the Income Tax Changes Due to the COVID-19 National Emergency, 05/19/2020].

**Nevada.** Nevada does not have a state income tax.
New Hampshire. New Hampshire does not have a state income tax.

New Jersey. The New Jersey Division of Taxation (DOT) has issued a set of Frequently Asked Questions (FAQs) for employers and employees regarding income sourcing for those telecommuting as a result of the coronavirus (COVID-19). New Jersey rules specify that income is sourced where the service or employment is performed, based on a day's method of allocation. The FAQs explain that 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. The DOT will not advise employers to 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; however, employers must consider their unique circumstances and make that decision. The DOT does not intend to alter its audit enforcement approach for telecommuters for calendar year 2020 as a result of widespread telecommuting arrangements being instituted by employers to reduce the further spread of the virus. If an employee is underwithheld, the DOT is unable to waive interest as it is mandated by N.J. Rev. Stat. § 54A:9-5. Relief from applicable penalties may be granted on a case-by-case basis if circumstances warrant.

The New Jersey Division of Taxation, Department of Regulatory Services, has clarified its policy of sourcing wage income to New Jersey during COVID-19. The Division advised that if a resident of California who normally works in California is staying in New Jersey during the COVID-19 emergency and telecommutes from New Jersey to a computer in California, the wage income may continue to be reported to California. However, if the stay in New Jersey is 183 days or more, this individual will be classified as a resident of New Jersey and will be subject to tax on all of their income during their period of residency [Email from Regulatory Services - Wage Income Earned During COVID-19 Income, 7/15/20].

New Mexico. A spokesperson for the Taxation and Revenue Department (TRD) has informed Thomson Reuters that the TRD is not currently addressing this issue.

New York. No guidance at this time.

North Carolina. No guidance at this time.

North Dakota. No guidance at this time.

Ohio. New legislation (L. 2020, H197), provides that, during the state emergency as declared on March 9, 2020 and 30 days after the conclusion of the emergency, any day which an employee performs work at a location, including the employee's home, due to the state of
emergency will be considered to be a day performing personal services at the employee's principal place of work.

**Oklahoma.** The Oklahoma Tax Commission told Thomson Reuters that it has not addressed this issue or released guidance.

**Oregon.** The Oregon Department of Revenue has provided guidance that states, for purposes of the Oregon corporate excise/income tax, the presence of teleworking employees of a corporation in Oregon between March 8, 2020 and November 1, 2020 will not be treated by the department as a relevant factor when making a nexus determination if the employees in question are regularly based outside Oregon [COVID-19 Tax Relief Options, 07/28/2020].

**Pennsylvania.** The Pennsylvania Department of Revenue has stated in a Find Answers webpage that if an employee who normally works in Pennsylvania is working from home temporarily in another state without a reciprocity agreement due to the COVID-19 pandemic, the DOR would not consider that as a change to the sourcing of the employee's compensation. It would remain Pennsylvania source income for all tax purposes and the employer is required to withhold on the compensation.

Guidance on when a Philadelphia-based employer is required to withhold wage tax from nonresident employees is updated to clarify that an employer may choose (but is not required) to continue withholding the Philadelphia wage tax from 100% of a non-resident employee's compensation even if the employer requires the nonresident employee to perform duties outside the city. Nonresident employees who had wage tax withheld during the time they were required to perform their duties from home in 2020 may file for a refund after the end of the 2020 tax year by submitting a wage tax refund petition and providing a copy of their W-2 form [Philadelphia Wage Tax policy guidance for non-resident employees, Philadelphia Dept. of Rev., revised 05/04/2020].

**Rhode Island.** The Rhode Island Division of Taxation has posted an emergency regulation, 280-RICR-20-55-14, effective May 23, 2020, that provides withholding tax guidance for employers that have employees who are temporarily working remotely due to the coronavirus (COVID-19) pandemic. The income of employees who are nonresidents temporarily working outside of Rhode Island solely due to the COVID-19 pandemic will continue to be treated as Rhode Island-source income for Rhode Island withholding tax purposes. In addition, Rhode Island will not require employers located outside of Rhode Island to withhold Rhode Island income taxes from the wages of employees who are Rhode Island residents temporarily working within Rhode Island solely due to the COVID-19 pandemic. The following limitations apply to this emergency rule: applies to employers whose employees are temporarily...
performing remote work outside of Rhode Island solely because of the ongoing COVID-19 State of Emergency; does not apply to employers outside of Rhode Island who, prior to March 9, 2020, were withholding Rhode Island taxes from the wages of their employees working remotely in Rhode Island; does not apply to employers in Rhode Island who, prior to March 9, 2020, were withholding another state’s taxes from the wages of employees working remotely in that other state; does not apply in situations where the employer and its employees, albeit working remotely, are situated in the same state; applies to wages earned on or after March 9, 2020 until one of the relevant specified conditions is satisfied as it relates to the employer; and does not apply to payments required to be made under the Rhode Island Employment Security Act, the Rhode Island Temporary Disability Insurance Act, or the Job Development Assessment. The emergency regulation will remain in effect until November 18, 2020 [Rhode Island Advisory No. 2020-22, 05/26/2020].

**South Carolina.** The South Carolina Department of Revenue has released Information Letter 20-24, effective from March 13, 2020 through December 31, 2020. The Information Letter provides temporary relief regarding a business’s establishment of nexus solely due to an employee temporarily working in a different work location during the coronavirus (COVID-19) public health emergency and provides guidance regarding employer withholding requirements on these employees. During the COVID-19 relief period, a South Carolina business’s withholding requirements are not affected by the current shift of employees working on the employer’s premises in South Carolina to teleworking from outside of South Carolina. Accordingly, the wages of nonresident employees temporarily working remotely in another state instead of their South Carolina business location are still subject to South Carolina withholding. Additionally, an out-of-state business with employee working from home in South Carolina is not subject to South Carolina’s withholding requirement solely due to the shift of employees working on the employer’s premises outside of South Carolina to teleworking from South Carolina. Accordingly, the wages of a South Carolina resident employee temporarily working remotely from South Carolina instead of their normal out-of-state business location are not subject to South Carolina withholding if the employer is withholding income taxes on behalf of the other state. DOR will not use changes solely in an employee’s temporary work location due to the remote work requirements arising from, or during, the COVID-19 relief period as a basis for establishing nexus or altering apportionment of income.

**South Dakota.** No guidance at this time.

**Tennessee.** Tennessee does not have a state income tax.
Texas. Texas does not have a state income tax.

Utah. A spokesperson for the Utah State Tax Commission informed *Thomson Reuters* that the state has not as yet addressed this issue but "may take it up in an as yet to be scheduled special legislative session."

Vermont. The Vermont Department of Taxes (DOT) has updated its COVID-19 Update webpage with guidance regarding employees who working remotely in Vermont. Employers who have remote workers located in Vermont temporarily is not required to change the employee's withholding state. However, employers and their workers may wish to discuss a change to the employee's withholding state if the worker will be working remotely in Vermont for an extended period of time, even if only temporarily. Workers who have moved to Vermont permanently and make Vermont their domicile will need to have their withholding location changed. Nonresidents temporarily working in Vermont are subject to Vermont income taxes for income earned while performing work in Vermont regardless if the employer is located within the state.

Virginia. No guidance at this time.

Washington. Washington does not have a state income tax.

West Virginia. The City of Charleston has issued a City Collector Opinion clarifying that an employee who is teleworking or on paid leave will still be considered employed by a location within the city and is not considered permanently assigned to an outside location. Employers are required to continue withholding and remitting the user fee. Charleston residents who are temporarily working from home who are employed by employers located outside Charleston should not have the user fee withheld. These employees are not employed by a location within the city and are only temporarily and involuntarily conducting business from their homes in Charleston for a non-Charleston employer.

Wisconsin. No guidance at this time.

Wyoming. Wyoming does not have a state income tax.

*Thomson Reuters Sources:*

Payroll Update—

State Income Sourcing Rules for Telework during COVID-19 (Update #1) (05/18/2020)

*State Income Sourcing Rules for Telework during COVID-19 (04/20/2020)*
Payroll Guide—

Payroll Guide ¶ 5702, Colorado - Withholding - Employees

Payroll Guide ¶ 7202, Maryland - Withholding - Employees

Payroll Guide ¶ 7424, Michigan - Wages defined (Local withholding)

For withholding extensions, see ¶ 1002

For state COVID-19 resource webpages without extensions, see ¶ 1003

For out-of-state disaster relief work, see ¶ 1005

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