

What A&E Firms Need to Know About Remote Work and its Implications for Company Taxes

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What constitutes a “remote” employee? If you’ve ever taken your work computer or cell phone on a trip, you’ve been a remote employee. Since many people found themselves suddenly required to work remotely last year due to the pandemic, for many of us, our work location is wherever our computer is located.

While it may seem to be of little consequence from the employee’s perspective, working remotely can create significant tax issues for employers. Your employees’ work locations matter greatly when it comes to your company’s state and local taxes. Since it seems that remote workforces are here to stay, it’s even more important to know where your employees are and what the associated potential tax implications are.

Here are a few questions you can ask to gauge where your company stands with respect to the state and local tax issues associated with remote

work:

- Is the remote arrangement a temporary arrangement due to COVID or is it anticipated to be permanent?
- Does your company require employees to report changes in their work location?
- How are you tracking hybrid employees?
- Is there a system in place to capture and analyze the impact of this data if it is gathered?
- Are you aware that there are some jurisdictions requiring the employer to continue payroll withholding based on the pre-COVID work location while the employee's "temporary" work location also requires payroll withholding?

Why do my employees' physical locations matter?

State and local income tax, sales tax and payroll tax laws govern how—and at what rate—businesses and workers are taxed. These laws vary significantly from state to state. Planning for state and local taxes begins with understanding of physical presence and economic presence.

Physical Presence

Having a physical presence of employees within a state has been and remains the gold standard for creating nexus for state taxes such as income tax, payroll tax and sales and use tax. The level of physical presence in a state that constitutes nexus has never been consistent; for some states, it's one day, and for others it may be three days.

Economic Presence

The second test of nexus is usually based on a certain level of sales in that state, but a single remote employee within a state's borders can also be sufficient to establish nexus, creating an enormous burden for businesses.

For further information regarding your organization's sales tax responsibilities, read our recent Anchin Alert ["What You Need to Know About Remote Work and Sales](#)

[Tax.”](#)

Payroll Tax Requirements

State income tax withholding and unemployment taxes typically follow the rules of the state where the work is performed. When employees come to your place of business for work, payroll withholding generally follows the rules of the state in which the business is located.

However, when employees work remotely in another state, the employer may need to withhold state income taxes and pay state unemployment taxes for the employee’s home state—assuming the employee is in one of the 41 states that assess state income taxes on wages and salaries.

The first step is determining where employees are working, whether they plan to be there temporarily or permanently, and whether the state has issued a waiver for employees working remotely due to the pandemic. One of our Anchin Alerts, [“Caution: COVID-Era Remote Worker Tax Relief Coming to an End”](#) highlights the states that have already eliminated or will begin eliminating these exemptions.

The additional filing requirements for businesses with employees working temporarily in several states, while also navigating the patchwork of rules and requirements, can be daunting.

In some states, the threshold for deciding whether the employer must submit taxes for the state where the employee is working is based on days working in the state. In other states, that threshold is based on income. However, in other states it’s based on a combination of the two.

Income Tax Nexus and Apportionment

If your business has taxable nexus in several states, it can be difficult to determine how much business income is related to your business activity in each state – a process commonly referred to as apportionment of taxable income.

Many states base income tax apportionment on sales and assess income taxes only

on the company's share of sales in that state.

However, some states still factor payroll and property into their income tax apportionment calculations. In these states, employee payroll and the value of business properties employees use to perform services help determine what portion of the company's profits get taxed in that state.

Again, every state has different rules for determining whether the business must pay compensation in the state where the employee is working rather than the business's home state.

If the company is required to pay wages in another state, both the employee's payroll and the property they use to perform their job may be sourced to the state where they work, which can significantly impact apportionment calculations.

Plan Now to Minimize Your Tax Burden

Waiting to evaluate everything at tax time can result in penalties, as well as potential tax overpayments. We recommend taking stock of your new remote employees and the state and local tax (SALT) laws they trigger now so you can begin planning strategies to minimize the tax burden.

For more information on how employers can strategically plan ahead around remote work and its effect on the company's tax plan, please reach out to [Phillip Ross](#), [David Rubin](#) or your Anchin Relationship Partner.