

What You Need to Know About Remote Work and Sales Tax

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One of the lasting consequences of the COVID-19 pandemic for businesses is that more and more employees are choosing to work remotely rather than return to the office. For many service-based companies, all their employees need is a computer and an internet connection to perform their assigned tasks.

From a tax perspective, remote working creates many challenges for an organization due to the fact that the physical presence of a telecommuting employee will establish nexus, a connection between the business and the state, such that the out-of-state entity will be subjected to the tax rules of the state in which the employee is working. Various taxes imposed by remote work states would fall within the confines of this nexus, including income tax and payroll withholding. However, often the biggest tax compliance challenge facing businesses with telecommuting employees is with respect to sales tax. Properly computing, collecting and remitting sales tax in the 45 states that levy a sales tax is highly burdensome.

Below is a discussion of some of the obstacles companies with remote employees confront when addressing their sales tax obligations in states in which they have not previously operated.

Nexus

Prior to the pandemic, most businesses were able to limit their sales tax compliance responsibilities because there were only two ways a company could establish sales tax nexus: physical presence or economic thresholds. Many businesses were able to control the states in which they collected sales tax by limiting the locations from where their employees work – generally to states in which the entity had an office or warehouse. This control was recently diminished by the landmark Supreme Court case of Wayfair, which allowed states to levy sales tax responsibilities on businesses that engaged in substantial, remote transactions within a state (e.g., more than \$100,000 of annual remote sales, or more than 200 separate, yearly transactions). Nevertheless, businesses with few remote sales continued to avoid having to file sales tax returns in most states unless they had a local employee. However, with remote work becoming more mainstream, companies find themselves in a position of needing to remit sales tax filing in jurisdictions with little economic activity because of the presence of a new telecommuting employee.

Rates

Nexus established through the physical presence of a telecommuter is further complicated by the fact that each state has its own nuanced sales tax laws. For example, there are more than 12,000 different sales taxing rates throughout the United States. Rates can often differ within a jurisdiction based on the type product sold or service rendered. Moreover, local counties, municipalities and other special taxing districts can also add tax surcharges. Tracking these rates and ensuring a business is charging the applicable rate is onerous and can often only be achieved by licensing expensive, specialized software.

Taxability

An additional sales tax issue for companies with telecommuting employees is determining what products and services are taxable in the new telecommuting state. One particularly difficult situation to decipher is the treatment of so-called bundled transactions where taxable and nontaxable items are sold together. Are both items taxable? What if they are separately stated on the customer invoice? Does it matter if one element is the true object of the transaction? The rendering of services itself

also raises challenges for companies with remote employees. In general, most states do not levy sales taxes on services, but a growing number of jurisdictions impose tax on certain specifically enumerated services. Finally, taxing jurisdictions are still trying to update their sales tax laws to account for technological innovations, including digital products, cloud computing and Internet advertising. All of this must be carefully analyzed to ensure a business is adhering to the respective sales tax rules of the remote work jurisdiction.

Compliance

As a business shifts its operations to a remote working model, acknowledging that it has multijurisdictional sales tax nexus and understanding the taxability of its products and services, it must contend with the various filing and remittance obligations to the taxing authorities. Knowing which form to use, where and when to file and what to include on the returns is labor intensive and requires much attention to detail. It can be a struggle tracking the varying state filing frequencies and deadlines. Erroneously filed forms, late filings, and underpayments can result in significant penalties and increased audit scrutiny.

Conclusion

Sales tax compliance on a multistate scale can be extremely challenging and all the more difficult if a business did not anticipate the obligation and exposure in advance. Many businesses are surprised to learn of the considerable sales tax implications that telecommuting has created for their enterprise. If you have any questions regarding your organization's sales tax responsibilities due to remote work, please contact [Alan Goldenberg](#), Principal and Leader of Anchin's State and Local Tax and Tax Controversy groups, or your Anchin Relationship Partner.