STATE AND LOCAL TAX: A PANDEMIC REFERENCE

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Remote Employees' Personal Taxes

- **Withholding** involves deducting income and payroll taxes from employees' compensation
  - Generally, workers owe taxes to the state from which they work regardless of the employer's location.
    - > Exceptions:
      - – Reciprocity agreements wages are sourced to the employee's resident state (Ex: New Jersey and Pennsylvania)
      - – "Convenience of the Employer" Rules wages and compensation are sourced to the employee's assigned work location regardless of where they are actually working. (Ex: New York, Pennsylvania, Delaware, Connecticut)
  - If an employee was working in a state other than their work state and is telecommuting from home due to the pandemic, changes in withholding obligations vary by state.
- **Statutory residency and domicile** can be significantly impacted by the pandemic stay-at-home orders and travel restrictions that effect how much time employees can spend in a state.
  - Statutory Residency considers the time spent in-state based on the number of days (varies by state) and one's permanent place of abode.
  - Domicile is the location where one intends to maintain their permanent, primary home.
    - > A change in domicile considers many factors evidencing both a physical and emotional relocation and re-establishment of one's lifestyle elsewhere.
  - Dual residency is a problematic situation that can result in tax obligations to two states, as one can be a domiciliary of one state and a statutory resident of another.

Nexus

Nexus is a "connection" between a taxing state and a business and is the constitutional standard required for a state to impose its tax regime on a business.

- **Income Tax**
  - Businesses with a physical presence in a state are likely to have nexus with the state for income tax purposes.
  - Employees teleworking from a state where the business otherwise does not have nexus may create nexus with that state, creating potential income tax liabilities.
  - States are reacting in different ways to the creation of nexus due to pandemic telecommuting:
    - > Some have waived nexus for businesses with remote employees during the pandemic, meaning that the temporary presence of teleworking employees will not create nexus
    - > Others have announced they will not change their long-standing nexus rules
    - > Still others have said nothing at all, leading to the presumption that the current nexus standards remain unchanged.
- Be aware that temporary nexus relief will expire once orders of emergency end.

  Employees telecommuting in various states and localities can create nexus for various other taxes:
  - **Sales and use tax**
  - **Gross receipts and net worth taxes**
  - **Unemployment insurance, registrations and licensing**

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Apportionment is the...

The process multi-state entities use to divide taxable income among states

- **States lack uniformity in their apportionment formulas and sourcing methodologies**
  - Types of apportionment formulas:
    - > Single sales
    - > Three-factor sales, property and payroll
    - > Three-factor with double-weighted sales
      - – Include wages and compensation paid to employees teleworking from that state in the payroll factor
- **Businesses with employees teleworking from different states may have to adjust apportionment calculations for service revenue sourcing rules.**
  - Businesses in states that use market-based sourcing should not see a change in apportionment due to telecommuting.
  - Businesses in states with cost of performance sourcing rules will likely see changes that may be favorable or unfavorable depending on the jurisdiction.
- **A newly remote workforce in cost of performance states will require the sourcing of revenues to those states where the remote workers perform their work, thereby subjecting the business to income taxes in jurisdictions.**
- **Conversely, there is potential for tax savings if the business is located in a cost of performance jurisdiction but remote workers are providing services from elsewhere.**

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