



COVID-19 TAX ALERT

April 21, 2020

Telecommuters and Massachusetts Taxes

The Massachusetts Department of Revenue has issued an emergency regulation, 830 CMR 62.5A.3, and Technical Information Release (“TIR”) 20-5, that address the tax sourcing rules applicable to telecommuters both within and without the State of Massachusetts. Specifically, the Emergency Regulation addresses the sourcing rules applicable to income earned by a non-resident employee who telecommutes on behalf of a Massachusetts business from a location outside of Massachusetts due to the COVID-19 state of emergency in Massachusetts. The emergency rule provides that:

Under M.G.L. c. 62, § 5A(a), income of a non-resident derived from a trade or business, including any employment, carried on in the commonwealth is sourced to Massachusetts. Pursuant to 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 under M.G.L. c. 62, § 5A and personal income tax withholding pursuant to M.G.L. c. 62B, § 2.

As a result of the foregoing, New Hampshire residents that are working from their homes during COVID-19 but that would normally be engaged in employment in Massachusetts should continue to treat such income as Massachusetts-source income. In addition, Massachusetts will not treat as Massachusetts-source income wages earned by out-of-state employees resident in Massachusetts due to COVID-19, nor require employer withholding for the same.

TIR 20-5 provides further clarification of the rules applicable to other business taxes for employees that previously worked in another state but, solely due to COVID-19, are working remotely from Massachusetts:

- The presence of such employees will not in and of itself trigger nexus for sales and use tax or corporate excise tax purposes.



COVID-19 TAX ALERT

April 21, 2020

- Services performed by such an employee in Massachusetts will not be considered to increase the numerator of the employer's payroll factor for corporate apportionment purposes.

The Emergency Rule and TIR apply from March 10th to the date Governor Baker ceases the State of Emergency. See [Emergency 830 CMR 62.5A.3](#) and [TIR-20-5](#).

For more information, contact [Kathryn Michaelis](#) and [Chris Sullivan](#).