



## Remote Employee Nexus Relief

Despite states relaxing shelter-in-place and work-from-home mandates, most employers continue to allow employees to work remotely. Employees have since transitioned to exclusively working from their home offices, vacation homes or other remote locations.

While shortened commutes and reduced dry-cleaning expenses are certainly perks for employees, remote workforces create complex employee nexus and state income tax withholding issues for employers. To address these concerns, some states have issued guidance addressing how in-state business activities will be treated for employees working remotely due to COVID-19.

States granting temporary relief are generally focusing on a combination of two issues, with the scope of relief varying greatly between states, including:

- Employer-level state income tax nexus determinations based on remote employees; and
- State income tax withholding requirements of remote-working employees.

For example, relief in [Indiana](#), [Iowa](#), [Minnesota](#), [North Dakota](#), [Oregon](#) and the [District of Columbia](#) is focused only on nexus determinations, while [Illinois](#) and [Nebraska](#) have focused only on employee wage withholding issues. In addition, the level of authority that states use in issuing the relief varies widely from official advisories and notices to a few sentences on the Department of Revenue’s Frequently Asked Questions (“FAQ”) section of the website.

### State Income Tax Withholding Requirements and Employer-Level Income Tax Nexus Determinations

Of the states that currently provide guidance on income tax withholding requirements, a common theme is to keep withholding the same as it was before the pandemic. However, relief varies by state for withholding as well as nexus determinations. Below are examples of how states are managing and communicating their requirements, if any guidance is provided:

State	Relief Provided?		Time Period
	Employee Withholding	Nexus	
<a href="#">Alabama</a>	Employees temporarily working from home due to the pandemic will likely <b>not</b> affect sourcing of the employee’s compensation.	The state will likely not consider employees temporarily working from home due to the pandemic to impose income tax nexus on the employer.	"During the federally declared period of emergency due to the coronavirus (COVID-19) pandemic"
<a href="#">California</a>	Income tax must be withheld on wages earned in California. However, wages	The state will likely not consider employees temporarily working	"...until the Governor's Executive

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	will not be subject to Unemployment Insurance (UI) tax, Employment Training Tax (ETT) and Disability Insurance (DI) withholdings if the employee is temporarily working in California solely due to the COVID-19 pandemic.	from home due to the pandemic to impose income tax nexus on the employer.	Order is no longer in effect.”
<b>Florida</b>	No specific guidance	No specific guidance	No specific guidance
<a href="#"><u>Georgia</u></a>	Employees temporarily working from home due to the pandemic will likely <b>not</b> affect sourcing of the employee’s compensation.	The state will likely not consider employees temporarily working from home due to the pandemic to impose income tax nexus on the employer.	While there is “an official work from home order issued by an applicable federal, state or local government unit” or “pursuant to the order of a physician in relation to the COVID-19 outbreak” plus an additional 14 days to “allow for a return to normal work locations.”
<b>New York</b>	No specific guidance	No specific guidance	No specific guidance
<b>North Carolina</b>	No specific guidance	No specific guidance	No specific guidance
<a href="#"><u>South Carolina</u></a>	Employees temporarily working from home due to the pandemic will likely <b>not</b> affect sourcing of the employee’s compensation.	The state will likely not consider employees temporarily working from home due to the pandemic to impose income tax nexus on the employer.	March 13, 2020 – December 31, 2020
<b>Tennessee</b>	No specific guidance	No specific guidance	No specific guidance

### States Focus on Temporary Nature of Guidance

For both relief of withholding and nexus determination, states have emphasized one key word: “temporary.” South Carolina and other states make clear that all relief is fluid. Notably, states are generally unwilling to afford relief once a worker’s status changes from temporary to permanent while working remotely. While South Carolina, Nebraska and Oregon provide a clear



window of time for the applicable period of relief, many states simply say that relief is afforded while temporary telework requirements are in place, or during the temporary period of the COVID-19 pandemic. Further, states reference federal or state declared periods of emergency from COVID-19, which is increasingly difficult for employers to apply. Some relief is currently set to expire soon, such as in Oregon and South Carolina (December 31, 2020) and Nebraska (January 1, 2021).

While nexus issues remain murky, uniform relief could come through federal legislation. Congress has introduced the Remote and Mobile Worker Relief Act of 2020 (S. 3995), which has been included in the ongoing discussions of a second round of federal coronavirus relief. For now, COVID-19 relief and related temporary protections address short-term concerns but ultimately create new, complex questions. State and local tax strategies should be evaluated regularly to ensure compliance with evolving nexus and income tax withholding obligations.

### **We're Here to Help**

If you would like to discuss how your business may be impacted or would like more information about Bennett Thrasher's State & Local Tax practice, contact [Brian Sengson](#) by calling 770.396.2200.

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