

When the Office Can be Anywhere, The Question of Where Taxes are Paid Looms

By Brian Kirkell

What does the office of the post-pandemic future look like? For a growing number of businesses, particularly in industries and divisions that proved capable of thriving in a virtual environment, the answer is a far cry from the team rooms, cubicle pods, and ever-shrinking personal spaces that defined the office environment of February 2020. Although the number of companies eliminating their office footprints entirely remains relatively small, the rising trend is toward leaner office spaces intended for regular use only by a limited number of key, local personnel.

After a year of pandemic, businesses have a good sense of the general benefits and detriments of a more remote, broadly dispersed workforce. At the forefront are a number of employee-relations considerations. From human resources issues such as hiring, training, and retaining workers, to infrastructure and investment concerns involving office leases, hardware, and software for remote employees, the long-term questions businesses face seem to multiply. With all of these issues clamoring for immediate board and management attention, it is too easy to forget about state and local taxes. But that would be a mistake—one that could cost your business dearly.

In general, a business that has employees working in a given state is subject to the tax jurisdiction of, or has tax nexus with, that state. Except in certain circumstances, one employee is enough, and it does not matter whether the employee performs an executive, solicitation, production, or administrative function. Virtual workforce opportunities have allowed employees to become transient, potentially increasing or reducing your state tax obligations.


With regard to the location of remote executives specifically, there are larger board concerns. Many states apply a “nerve center” test when sourcing certain types of receipts, such as investment receipts, for income and gross receipts tax purposes and when sourcing a business’s franchise value for franchise tax purposes. Thus, a billion-dollar gain from the sale of a subsidiary could be sourced entirely to the CEO’s home office or even vacation home office if that is where the decisions related to the sale were made. Understanding the applicable tests and closely managing where executive leadership makes key decisions are imperative in a virtual environment.

The full board and audit committee should ensure that they ask management to consider individual income tax withholding on

employee and state unemployment insurance, as well. In general, withholding and unemployment insurance are due to the state in which the employee performs their work. In a virtual environment, this will generally be the employee’s state of residence, but it may not be in instances where the employee has multiple homes.

Furthermore, sales and use tax considerations may be magnified in a virtual environment. From a process perspective, there will be new states to deal with, forms to file, and exemption certificates to keep and track. Deploying computers, peripherals, software, and technology-related services in states where employees reside may result in significant reporting costs and liability. Additionally, purchases of large-scale cloud services, such as enterprise cloud software or the use of remote servers and storage, may be subject to tax in multiple jurisdictions depending upon the application of state sourcing, first-use, and multiple-points-of-use rules. Particularly for businesses that have historically operated in a single state, these considerations may be a shock.

Many states offer a variety of credits and incentives based on the hiring, training, and relocation of employees and investment in real or tangible property. Some of these credits and incentives are statutory and merely require you to meet specified requirements. Others are negotiated and depend on the level of planned activity in the state. There are relatively few programs that are designed for a completely virtual workforce; however, the number and variety of these programs is increasing. Before you tell your employees that they can move anywhere, take advance action to determine whether and where these programs can benefit your business and employees, then you can let your employees know where they can go.

All of these state tax considerations may seem overwhelming, but every challenge can be overcome with careful planning, regular communication between the board and executive leadership, and having the right people in place to manage the process. 



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