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TECHNICAL INFORMATION RELEASE

TIR 20-15: Revised Guidance on the Massachusetts Tax Implications of an Employee Working Remotely due to the COVID-19 Pandemic

DATE:

12/08/2020

REFERENCED SOURCES:

[General Laws](https://malegislature.gov/Laws/GeneralLaws) (https://malegislature.gov/Laws/GeneralLaws)

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I. Introduction

This Technical Information Release (“TIR”) extends the previously-announced Massachusetts tax relief in situations in which employees work remotely due solely to the 2019 Coronavirus (“COVID-19”) pandemic. In response to the COVID-19 pandemic, Massachusetts and other states have declared states of emergency and issued temporary social-distancing measures and other restrictions. Many businesses have implemented work-from-home requirements for their employees in response to government orders and public health recommendations. In light of the continuing state of emergency, the Department is extending its previously-announced emergency rules.

TIR 20-10 announced relief for employers and employees during the COVID-19 state of emergency.^[1] TIR 20-10 is hereby superseded. This TIR revises and restates TIR 20-10, and makes those temporary rules effective until 90 days after the state of emergency in Massachusetts is lifted. As of that date, the rules set forth in this TIR will cease to be in effect and the presence of an employee in Massachusetts, even if due solely to a Pandemic-Related Circumstance (as defined below), will trigger the same tax consequences as under Massachusetts law more generally.

This TIR announces that, while the rules in this TIR remain in effect, the presence of one or more employees working remotely in Massachusetts due to (a) a government order issued in response to the COVID-19 pandemic, (b) a remote work policy adopted by an employer in good faith compliance with federal or state government guidance or public health recommendations relating to COVID-19, or (c) the worker’s compliance with quarantine, isolation directions relating to a COVID-19 diagnosis or suspected diagnosis, or advice of a physician relating to COVID-19 exposure^[2] (collectively, “Pandemic-Related Circumstances”) will not, by itself, create a withholding obligation with respect to such employees. See 830 CMR 62.5A.3. This TIR also announces that, while the rules in this TIR remain in effect, one or more employees working remotely in Massachusetts solely due to a Pandemic-Related Circumstance, including the presence of business property reasonably needed for such persons’ use while working remotely, will not subject a business to a sales and use tax collection obligation or to the corporate excise (or corporate apportionment adjustments) by reason of that fact. Additionally, this TIR explains that businesses claiming a nexus exemption under Sections III-V must maintain written records sufficient to substantiate the existence of a Pandemic-Related Circumstance with respect to the employee(s) triggering the application of these rules. Lastly, this TIR explains the application of the Massachusetts Paid Family and Medical Leave (“PFML”) program where an employee works remotely in a different state due to a Pandemic-Related Circumstance.

II. Personal Income and Withholding Tax

For Massachusetts personal income tax purposes, Massachusetts residents are generally taxed on all of their income from whatever sources derived. M.G.L. c. 62, § 2. Non-residents are taxed on items of gross income from sources within the Commonwealth, including income derived from or connected with any trade or business, including any employment, in Massachusetts. M.G.L. c. 62, § 5A. Wage income paid to an individual

that is subject to the Massachusetts personal income tax generally must be withheld upon for each payroll period by his or her employer. M.G.L. c. 62B, § 2.

Simultaneous with the issuance of this TIR, the Department of Revenue (the "Department") has extended emergency regulation 830 CMR 62.5A.3: Massachusetts Source Income of Non-Residents Telecommuting due to the COVID-19 Pandemic, which explains the sourcing and withholding rules applicable to employees who are telecommuting due to the COVID-19 pandemic. Pursuant to the regulation as extended, until 90 days after the state of emergency in Massachusetts is lifted, all compensation received for 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 began performing services from a location outside Massachusetts due to a Pandemic-Related Circumstance, will continue to be treated as Massachusetts source income subject to personal income tax under M.G.L. c. 62 and personal income tax withholding.

The regulation also provides rules for non-resident employees who, prior to the Massachusetts COVID-19 state of emergency, determined their Massachusetts source income by apportioning their days spent in Massachusetts in accordance with 830 CMR 62.5A.1(5)(a). Pursuant to 830 CMR 62.5A.3(3)(b), such non-resident telecommuting employees must determine the portion of their wages that constitutes Massachusetts source income during the Massachusetts COVID-19 state of emergency based on either (1) the percentage of their work days spent in Massachusetts during the period January 1 through February 29, 2020 as determined under 830 CMR 62.5A.1(5)(a), or (2) if they worked for the same employer in 2019, the apportionment percentage properly used to determine the portion of their wages from that employer that constituted Massachusetts source income as reported on their 2019 Massachusetts personal income tax return.

Other states have adopted or are adopting similar sourcing rules due to similar declared states of emergency. A resident employee who, immediately prior to the Massachusetts COVID-19 state of emergency was an employee engaged in performing services from a location outside of Massachusetts, and who began performing such services in Massachusetts due to a state's COVID-19 state of emergency or other Pandemic-Related Circumstance, will be eligible for a credit for taxes paid to that other state, to the extent provided under G.L. c. 62, § 6(a). In addition, the employer of such an employee is not obligated to withhold Massachusetts income tax for the employee to the extent that the employer is required to withhold income tax with respect to the employee in such other state.[\[3\]](#) ([#_ftn1](#))

III. Sales and Use Tax

In general, a vendor has nexus for sales and use tax collection purposes if it is engaged in business in the Commonwealth. M.G.L. c. 64H, § 1. Generally, a vendor is engaged in business in the Commonwealth if it has a physical presence in Massachusetts, including having one or more of its employees in Massachusetts, or if it makes sufficient sales into Massachusetts in a calendar year. *Id.*; M.G.L. c. 64H, § 34(a). During the period that the rules in this TIR remain in effect, the presence of one or more employees working remotely from Massachusetts, due solely to a Pandemic-Related Circumstance, will not in and of itself trigger nexus for sales and use tax collection purposes.

IV. Corporate Excise

A business corporation is generally subject to an excise due under M.G.L. c. 63 when it does business in Massachusetts. M.G.L. c. 63, §§ 1 and 39. A business corporation is generally considered to be doing business in Massachusetts when it has one or more employees conducting business activities on its behalf in Massachusetts. 830 CMR 63.39.1(3)(b)(5), (5)(b)(3). During the period that the rules in this TIR remain in effect, the Department will not consider the presence of one or more employees working remotely from Massachusetts solely due to a Pandemic-Related Circumstance, including the presence of business property reasonably needed for such persons' use while working remotely, to be sufficient in and of itself to establish corporate nexus. In addition, such presence will not, of itself, cause a corporation to lose the protections of Public Law 86-272. Relatedly, for corporate apportionment purposes, (1) services performed by such persons in Massachusetts will not increase the numerator of the employer's payroll factor, and (2) the presence in Massachusetts of business property reasonably needed for such persons' use while working remotely will not increase the numerator of the employer's property factor.[\[4\] \(#_ftn1\)](#)

V. Pass-through Entities

Pass-through entities (S corporations and entities treated as partnerships for tax purposes) must withhold personal income tax on compensation paid for services performed if the compensation is Massachusetts source income under the rules set out in Section II of this TIR. In addition, pass-through entities may also be required to file annual returns. Specifically, partnerships having a usual place of business in Massachusetts must file information returns. M.G.L. c. 62C, § 7. S corporations that have nexus in Massachusetts must file corporate excise returns. M.G.L. c. 62C, § 11; M.G.L. c. 62, § 17A. In determining whether a partnership has a usual place of business in Massachusetts or whether an S corporation has corporate nexus with the Commonwealth, the Department will apply the rules and limitations set out in Section IV of this TIR to employees, partners and S corporation shareholders who began working remotely in Massachusetts due to a Pandemic-Related Circumstance. Further, in such cases, the Department will apply those rules and limitations to determine Public Law 86-272 protection and payroll factor and property factor apportionment for pass-through entities.

VI. Recordkeeping Requirement

To be eligible for the rules stated in Sections III-V of this TIR, businesses must maintain written records sufficient to substantiate the existence of a Pandemic-Related Circumstance with respect to the employee(s) triggering the application of such rules. For example, a business that seeks to rely on a work policy, quarantine, or isolation directions must retain a written copy of such policy or directions to claim the applicability of such rules.

VII. Paid Family and Medical Leave

Under the Massachusetts PFML program, businesses are required to collect and remit PFML contributions on behalf of individuals who perform services in Massachusetts. M.G.L. c. 175M, § 1. During the period that the rules in this TIR remain in effect, an individual who previously performed services outside of Massachusetts

and was not subject to PFML will not become subject to PFML solely because the individual is temporarily working from a location in Massachusetts due to a Pandemic-Related Circumstance. Likewise, an individual who previously performed services in Massachusetts but is temporarily working from a location outside of Massachusetts solely due to a Pandemic-Related Circumstance continues to be subject to the PFML rules.

/s/Geoffrey E. Snyder
Geoffrey E. Snyder
Commissioner of Revenue

GES:RHF:dbb

December 8, 2020

TIR 20-15

[\[1\] \(#_ftnref1\)](#) Note that TIR 20-10 superseded TIR 20-5.

[\[2\] \(#_ftnref2\)](#) For the sake of clarification, an employee's compliance with a required quarantine, written isolation directions, or written orders of a physician includes such orders relating to the employee's exposure, illness, or vulnerability as well as orders affecting a family member of the employee as a result of which the employee needs to be at home to care for the family member or to provide childcare.

[\[3\] \(#_ftnref1\)](#) The rules stated in this TIR do not in any way impact the 183-day computation that applies to determine the existence of a statutory "resident" within the meaning of M.G.L. c. 62, § 1(f).

[\[4\] \(#_ftnref1\)](#) Similarly, a corporate employee who began working in another state solely due to a Pandemic-Related Circumstance will not be deemed to cause the corporation to be subject to tax in that state for purposes of determining the corporation's right to apportion or for purposes of application of the principles of throwback or throwout. See 830 CMR 63.38.1(5).

REFERENCED SOURCES: [General Laws \(https://malegislature.gov/Laws/GeneralLaws\)](https://malegislature.gov/Laws/GeneralLaws)