



Working From Home:

The New Normal?

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3 Stages

WFH 1.0 Spring/Summer 2020

- Emergency response
- Stay at Home orders
- What positions to take on 2020 filings?

WFH 2.0 Q3 and Q4 2020

- Limited return to work
- The “Next Normal”
 - Partial WFH/WFO
 - Safe commutes/meals/ etc.

WFH 3.0 2021 – ?

- The “New Normal”
- National employment model
 - not commutable?
- Permanent WFH model?
- Branch locations?

Work From Home 1.0



Nexus/Permanent Establishment

- Do you have a filing obligation
- Know your jurisdictions
 - Not all jurisdictions tax based on employee location
 - Some jurisdictions have issued specific guidance/relief



Apportionment/Transfer Pricing

- Effects tax liability
- Know your jurisdictions
 - Not all jurisdictions tax based on employee location
 - Employee functions and compensation level are key considerations



Employee Withholding

- Generally based on office assignment
- W-4 based on new location
 - Difficult if no office there
 - How do you change offices in a virtual environment?

Work From Home 2.0



When will “grace period” run out?



Withholding tax has largely been unchanged

- What about people planning around bonus payments?



Firms are starting to track employees to create audit trail



Return to work issues

- Deductibility of subsidized safe commutes and meals



HR vs. Tax


- Restricting work from certain jurisdictions
- Security

Work from home 3.0 – Effect of having remote workforce

- ➔ **Increased nexus footprint**
- ➔ **Changes to apportionment formula**
 - Not all jurisdictions look to physical presence/cost of performance
 - What functions are where and can transfer pricing help establish apportionment
- ➔ **Telecommuting laws**
 - Some states may not require entity filing/apportionment if employees work from home
 - Will resident states continue to grant credit to residents who telecommute to other states?
- ➔ **Consistency of positions with employee withholding obligations**
 - What about employees being located in “uncommutable locations”?
 - What are best practices?
 - Tracking
 - Employer policy
- ➔ **Increased detection (registering to do business, payroll), increased compliance**
- ➔ **What about non-tax issues?**



Are states being more aggressive in asserting nexus/audits?



Yes! States are lowering/modifying their nexus standards to reach more out of state taxpayers



Increase in notices and audit activity



Increase in fees and penalties



Continued trend of market-based sourcing

Florida, Texas

California draft “look-through” regulations

Lessens the impact of having remote people (could have nexus, but no apportionment)



NYC unincorporated business planning

Reduced apportionment due to people working remotely outside the 5 boroughs



NYS telecommuter rule

NYS Telecommuter Rule

if an employee (not partner) is assigned to a NYS based office, and instead works from home outside of NYS, NYS will still tax them as NYS employees under the “convenience of the employer rule”.

Effects local work from home employees

Also effects relocated employees who work from homes

- Employee choosing to work from new home in Florida would still be subject to NYS tax
- If you set up a branch office in Florida, then you would have a much better case if reassigned to that office.
- But that office should be commutable and should be more than touch down space.
 - Office in Miami may not help an employee living in Orlando.

Also, beware of frequent trips to NYS – i.e., if you are in NY office more than Florida office you may be challenged

All of this also make the case for record keeping. This will be the key to defending an audit



Thank you





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