This Week in State Tax (TWIST)

July 13, 2026

New York: Refunds for nonresident earnings during pandemic denied under 'convenience of the employer' rule

Two recent Empire State rulings reinforce that wages earned for COVID-era work performed remotely for New York-based employers will still be sourced to New York for income tax purposes under the state's "convenience of the employer" rule (the convenience rule). Unlike most states which source nonresident wages based on where the service is performed, New York requires that for work by an employee based in New York to be sourced to another state, the services must "of necessity, as distinguished from convenience, obligate the employee to out-of-state duties in the service of his employer." Taken together, the two rulings seem to establish firmly that working outside New York because of COVID-related office closings in New York, absent other factors, will be insufficient to support sourcing wages outside the state.

In the first matter, the taxpayer was a Connecticut resident employed as a professor at Cardozo law School in New York City. The dispute centered on his earnings in 2020 during which time he worked 24 days in New York and performed his duties for the rest of the year from his residence in Connecticut because Cardozo ceased on-campus classes in response to a gubernatorial executive order addressing the COVID pandemic. The taxpayer claimed a refund for withheld taxes related to the work performed in Connecticut, contending it was not possible to perform his duties at his normal workplace. The Department of Taxation and Finance denied the refund based on the convenience rule, a determination that was upheld on appeal by both Division of Tax Appeals and the Tax Appeals Tribunal. The taxpayer then pursued review by the Appellate Division of the New York courts.

In its decision, the appellate court upheld the application of the convenience rule to the taxpayer. The law school employer did not require the taxpayer to perform his duties from Connecticut. It was indifferent to where he worked, and the only requirement was that the work not be performed on campus. The taxpayer also argued that sourcing his COVID period wages to New York violated the Due Process and Commerce Clause of the U.S. Constitution. As to the Due Process argument, the court held the taxpayer had sufficient connections with New York and continued to derive tangible and intangible benefits from his New York employment. "The pandemic temporarily altered the location from which [the taxpayer] performed his duties … but it did not diminish his connections to New York." As to the Commerce Clause, the appellate court found that the taxpayer's remote work did not necessarily implicate the Commerce Clause, and even if it did, the allocation of wages to New York under the convenience rule met the fair apportionment requirements of the Commerce Clause.

In the second matter, an executive of a financial services company that maintained a required "work from home" policy due to COVID restrictions relocated from New York to Florida in 2021. On her 2021 return, the taxpayer claimed the days she worked from Florida as non-New York days and sought a refund of withheld taxes. After

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gathering information, the Department denied the bulk of the refund, and the taxpayer appealed.

An Administrative Law Judge (ALJ) for the Division of Tax Appeals upheld the refund denial and determined that the convenience rule was applicable. While the taxpayer was required to work from home, information from the employer indicated she was not required to work from Florida and that it was indifferent as to where she worked. The taxpayer also contended she had established a home office dedicated to the work of the employer, and that the employer had provided or financed equipment for that office. The ALJ determined that dedicated space did not meet the requirements for a bona fide office of the employer as the employer did not pay rent, store records or inventory there, or provide business insurance for the location. As such, the wages paid to the executive in Florida constituted New York income for tax purposes.

While these two cases do not necessarily break new ground, they do demonstrate that overcoming the convenience rule requires demonstrable evidence that the services are being performed due to the business necessity of the employer to qualify for non-New York sourcing. For further information on *Zelinsky v. Commissioner of Taxation and Finance*, CV-25-1156 (July 2, 2026) and *Matter of Snyder*, Determination No. 831118 (June 25, 2026), contact Aaron Balken or Alec Schwartz.