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KPMG report: Expiring nexus and withholding relief in multiple states (COVID-19)

Working arrangements in many businesses shifted from “in the office” to “work from home” (or other locations) in response to the coronavirus (COVID-19) pandemic.

This work-location adjustment created potential challenges for a business’s traditional nexus and for Pub. L. No. 86-272 posture as well as creating possible additional employer withholding obligations by increasing the number of states where an entity might have employees working on a regular basis. To mitigate some of these issues, about 20 states provided temporary COVID-related relief.

Recently, many of these states have rescinded their declarations of COVID-19 emergency, and much of this relief is expiring.

Nexus relief

Most states taking action provided a COVID-19 specific “safe-harbor”—meaning that a state would not assert corporate income tax nexus on a business, based on the presence of employees working in the state due solely to the COVID-19 work situation. Some of these states also extended the safe harbor to cover sales and use tax nexus. Finally, several states indicated that employees in the state temporarily due to COVID-19 would not be considered in assessing compliance with the threshold of Pub. L. No. 86-272.

Most states linked the expiration of relief to the expiration of the state’s declared state of emergency, or a specific COVID-19 related executive order. In recent months, many of these orders have expired and more may be expected to expire in the coming months.

The reprieve expired before July 1, 2021, in:

- California
- Maine
- Massachusetts
- Pennsylvania

Other states with recent or upcoming expiration dates include:

- Iowa—July 25
- Maryland—August 15
- Oregon—December 31
- Rhode Island--August 6
- South Carolina—September 30

Mississippi and Wisconsin tied their relief to the duration of the "national emergency" that is currently set to expire March 1, 2022, unless further extended or rescinded by the president.

Withholding relief

Some states provided COVID-19-specific income tax withholding rules with regard to employees temporarily in the state during the pandemic. That guidance was a bit more varied and complex than the rules under the nexus and Pub. L. No. 86-272 area. In some states, if an employee was working in the state temporarily due to COVID-19, the employer need not begin to withhold from such workers.

In most states—e.g., Maine, Maryland, Nebraska, and South Carolina—this guidance expired or will expire along with the nexus guidance as outlined above. Massachusetts, Pennsylvania, and Rhode Island each issued guidance or regulations indicating that if a nonresident were employed primarily at a work location in the state, the wages paid to that nonresident would continue to be treated as subject to withholding in the state during the period of the pandemic. This guidance expired in Pennsylvania on June 30, 2021, and it is set to expire in Massachusetts on September 13, 2021, and in Rhode Island on September 15, 2021.

Kansas and Missouri—which share a metropolitan area border, and both impose withholding obligations based on where the service is performed—each acted to simplify matters for employers. If an employee previously worked at a primary business location of the employer in the state, but temporarily worked from another state during the pandemic, the employer may choose to withhold based on either the state of prior employment or the state of temporary work. The election expired in Missouri on July 19, 2021, and expires in Kansas on December 31, 2022.

With such varied relief and even more varied expiration time frames, taxpayers may need to periodically review their reliance on the relief rules.

Read an **August 2021 report** prepared by the KPMG LLP

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