



GMS Flash Alert



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United States - Supreme Court Not Hearing Challenge to State's Remote Worker Tax

The Supreme Court of the United States (SCOTUS) recently declined to consider whether Massachusetts' taxation of nonresident remote workers violates the U.S. Constitution.¹ The denial leaves in place the Massachusetts emergency regulations imposing Massachusetts income tax on certain compensation earned outside of Massachusetts.

WHY THIS MATTERS

Employers continue to be required to withhold Massachusetts income tax on compensation for services performed outside Massachusetts if paid to employees who were engaged in performing services in Massachusetts immediately prior to the Massachusetts COVID-19 emergency order through September 15, 2021 (the date the emergency regulation is set to expire).

Background

In response to the coronavirus pandemic, many U.S. state and local governments issued temporary public health measures and emergency orders intended to limit the spread of the coronavirus. These measures often placed capacity restrictions on businesses and required nonessential employees to work remotely. Additionally, many companies have adopted "work anywhere" policies that allow employees to perform services remotely in locations that were not previously their primary places of employment.

Seeking to protect their tax revenue bases from these COVID disruptions, many jurisdictions have issued guidance for employers with respect to withholding for remote workers. In some states, the guidance instructs an employer to make no changes to withholding if the employee, pre-COVID, was assigned to a work location in the state.

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Massachusetts' Temporary Telecommuting Regulations

In October 2020, the Massachusetts Department of Revenue issued an emergency regulation that generally provides that compensation will continue to be treated as Massachusetts-source income subject to individual (personal) income tax and individual income tax withholding if it is received for services performed by a nonresident who immediately prior to the Massachusetts COVID-19 state of emergency was an employee engaged in performing such services in Massachusetts, and who is performing services from a location outside Massachusetts due to a pandemic-related circumstance.² The emergency regulation, finalized March 5, 2021, applies to sourcing of wage income attributable to employee services performed March 10, 2020 through 90 days after the date the Massachusetts COVID-19 state of emergency is no longer in effect.

New Hampshire's Challenge

New Hampshire (which neighbors Massachusetts) does not impose an income tax, and thus its residents are not generally subject to any state income tax on compensation for services performed in New Hampshire. However, due to this emergency regulation, the compensation of a New Hampshire resident who was employed in Massachusetts before the Massachusetts COVID-19 state of emergency, and who works remotely from his home in New Hampshire due to coronavirus restrictions, continues to be subject to Massachusetts income tax and withholding. Thus, many New Hampshire residents have been subjected to Massachusetts income tax on compensation for services performed in New Hampshire.

New Hampshire sought to challenge the constitutionality of the Massachusetts emergency regulation, filing a motion for leave to file a bill of complaint with SCOTUS. (SCOTUS can exercise original jurisdiction in relation to disputes involving states.) On June 28, 2021, SCOTUS denied New Hampshire's request. SCOTUS did not explain its decision in denying the request, but its decision to deny the motion means that the emergency regulation remains in place. However, as the Massachusetts COVID-19 state of emergency ended on June 15, 2021, the emergency regulations are set to expire effective September 15, 2021.

KPMG NOTE

Beginning September 15, 2021, employees working remotely outside of Massachusetts should have wages reported and taxes withheld to the state where they are physically performing services. Employers will want to make sure they are registered for payroll in the states their employees are working remotely, and able to handle the complexity of compliance for a mobile workforce.

FOOTNOTES:

1 For the Supreme Court of the United States, Order List, June 28, 2021, see: https://www.supremecourt.gov/orders/courtorders/062821zor_6j37.pdf .

2 See 830 CMR 62.5A.3: Massachusetts Source Income of Non-Residents Telecommuting due to the COVID-19 Pandemic at: <https://www.mass.gov/regulations/830-CMR-625a3-massachusetts-source-income-of-non-residents-telecommuting-due-to-the> .

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