

State
Taxation of
Remote
Workers

Fiscal Affairs & Government Operations
Committee

Southern Legislative Conference of The
Council of State Governments

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Income Tax States not publishing specific guidance re nexus for teleworker presence due to COVID

- AR CO DE FL HI ID IL KS MO NC NH NM NY TN TX UT
VT WV

Corporate
income tax
nexus issues
arising from
“stay home”
order
telework
requirements

**AL AZ CA CT DC GA IA IN MA MD
ME MN MS NJ ND OK OR RI PA**

Phila. SC WI: no nexus from
teleworker presence

OH: HB 197--teleworker presence
will not count toward 20-day
threshold for municipal income tax
nexus

MI MT NE OH (CAT): Current nexus
rules apply

KY: case-by-case

Payroll factor
numerator
issues arising
from “stay
home” order
telework
requirements

**California, Massachusetts,
Minnesota, Mississippi, New
Jersey, North Dakota,
Pennsylvania, South Carolina:**
payroll factor numerator not
changed by “stay home” order
telework

P.L. 86-272
protection
issues arising
from “stay
home” order
telework
requirements

**California, District of
Columbia, Indiana, South
Carolina, Rhode Island:** no
loss of P.L. 86-272 protection
for presence of teleworkers
due to “stay home” orders
during pandemic

Sales/use tax
nexus issues
arising from
“stay home”
order
telework
requirements

CT MA ME MN NJ OK PA RI SC

WI: no sales/use tax nexus
attributable solely to “stay
home” order teleworker
presence

New Hampshire v. Massachusetts, U.S. Supreme Ct. Docket # 220154

- NH Motion for Leave to File Bill of Complaint filed 10/19/2020
- Brief in Opposition filed by Massachusetts
- Amici Curiae Briefs filed by OH and nine other states: AR IN KY LA MO NE OK TX UT; NJ and three other states: CT HI IA; Prof. Edward Zelinsky; Southeastern Legal Foundation; National Taxpayers Union Foundation (joined by several other taxpayer-supported organizations); The Buckeye Institute, all in support of NH
- Acting Solicitor General invited to file brief on 1/25/2021

MTC model mobile workforce legislative proposal (adopted 2011)

- Exemption for nonresident employee income earned while present in-state for 20-or-less days in the tax year
- Exceptions: professional athletes and entertainers, public figures, construction services, key employees per IRC 416(i) (high earners)
- Employee's state of residence must provide a reciprocal exemption.
- In-state presence for any part of a day counts as a "day" but transit time does not count.
- To avoid penalties, employer must use time and attendance system requiring employee to contemporaneously record work presence, or travel records or travel reimbursement requests required to be contemporaneously prepared and submitted by employee.

COST proposal and S. 3995 (116th Cong.)(Remote and Mobile Worker Relief Act)

- 30-day in calendar yr. exemption
- No “key employee” exclusion
- “Day” counted as “in-state” if nonresident employee spends more of that day working in-state than in any other state.
- Employer may rely on an employee’s annual determination of time expected to be spent by such employee in the taxing jurisdictions in which the employee will perform duties
- See www.mtc.gov to download comparison chart