Mobile and Remote Employees Bring State Tax Compliance Issues

April 12, 2023

Companies with workers who travel to other states for work (mobile workers) or those who work permanently from another state (remote workers) face unique state tax compliance challenges. For years, efforts to enact federal legislation to create a minimum threshold for employee withholding for mobile workers have failed. The COVID-related tax rules from 2020 enacted in many states, which provided relief for employers with remote workers, have largely expired. As a result, employers with mobile or remote workers face significant compliance burdens. Those may include state payroll income tax withholding, state unemployment tax withholding, state sales taxes, and state business taxes.

Mobile Workers – One Worker For One Day

Most states require compliance with their payroll taxes when a company has even a single employee performing services in the state.[1] This creates compliance burdens with payroll taxes for remote workers.[2] States can require withholding of payroll taxes if even a single day of work is done in the state. However, some states allow an employee to work remotely in their state for a limited number of days without a payroll withholding requirement. For example, Illinois allows for 30 days of remote work until withholding is required.[3]

Some states, like Michigan, have reciprocity agreements to address the issue of an employee living in one state and commuting to another state for work. Michigan has reciprocity agreements with Illinois, Indiana, Kentucky, Minnesota, Ohio, and Wisconsin. Some states tax their residents' income wherever earned as well as the income that all nonresidents earn while working in their state. Therefore, without the Michigan-Indiana Reciprocity Agreement, Michigan residents who work in Indiana could find themselves owing taxes for both states. Under these agreements, such a worker is only subject to taxation and withholding in the state of residence. Although many state governments will provide tax credits for income taxes paid to other states, these tax credits *do not* reduce compliance burdens as employers have to withhold for both states still and employees will have to file with both states.

Payroll and Unemployment Tax Costs for Out-of-State Employers with Remote Workers

There are employer costs involved in hiring remote employees, including:

- Discerning whether there are any filing and reporting requirements due to the remote employee
- Determining the sales and corporate tax liability and registration
- Creating withholding, unemployment, and business tax accounts in each state by adhering to myriad processes and filing many forms, all unique to each state[4]

Then, once the employee is hired, the company must annually:

- Calculate how much of each tax is owed, based on formulas that vary by state
- File information returns and tax returns for each state for each type of tax
- Recalculate apportionment factors to include the new state with a single employee[5]

With the growth in remote workers, the states may at some point create a more uniform and less burdensome way for employers to comply with their tax laws when hiring their residents, but for now employers need to be prepared to examine each state's rules. If you have questions about obligations related your remote workers' payroll taxes, please contact your Miller Canfield attorney or one of the authors of this alert.

[1] Paul Jones, *Remote Work Complicates Employer Tax Compliance, Pressures States to Revise Rules*, Taxnotes (Apr. 05, 2022).

[2] *Id.*

[3] Publication 130 Who is required to Withhold Illinois Income Tax August 2022 Illinois Department of Revenue.

[4] Blair Murphy, Remote Workers Create State Tax Issues That Can Impact Company Value, Ernst & Young (Apr. 8, 2022), https://go.ey.com/3jhJg6t; Daniel L. Stanley, Partner, Honigman LLP, Presentation at ICLE 34th Annual Tax Conference, I Have a Remote Employee: Now What? (May 26, 2022).

[5] *Id.*