

Massachusetts Extends COVID Guidance Relating to Sourcing of Employee Income

On December 8, 2020, Massachusetts extended its COVID guidance relating to the sourcing of employee income that was set to expire on December 31, 2020, via [emergency regulation](#) 830 CMR 62.5A.3 and via technical information release [TIR 20-15](#). (TIR 20-15 supersedes both TIR 20-10 and TIR 20-05.) The only change to the COVID guidance is that it will now remain in force until 90 days after the COVID-19 state of emergency in Massachusetts expires. Within TIR 20-15, the Massachusetts Department of Revenue noted that the extension is made “[i]n light of the continuing state of emergency.”

The emergency regulation—like the earlier promulgated regulation—requires income earned by non-residents who worked in Massachusetts prior to COVID-19, but who have teleworked from outside the commonwealth due to the pandemic, to continue to be sourced to Massachusetts. For these non-residents, the emergency regulation also requires Massachusetts personal income tax withholding. Conversely, the emergency regulation notes that Massachusetts personal income tax withholding is not necessary for Massachusetts residents who performed services from a non-Massachusetts location immediately prior to the pandemic to the extent the employer remains required to withhold income tax with respect to the employee in such other state. Further, Massachusetts residents will be eligible for credits for income taxes paid on to other states.

The emergency regulation does not disturb Massachusetts’ earlier guidance with respect to nexus. Specifically, for the duration of the COVID-19 state of emergency, the presence of employees in the commonwealth or business property reasonably necessary for the employees’ use will not affect nexus for purposes of sales and use or corporate excise tax liabilities, apportionment calculations, or liabilities under the Paid Family and Medical Leave Act, so long as the employees were present in Massachusetts due to certain pandemic-related circumstances.

For previous coverage regarding state taxation of telecommuting employees, see [Key Tax Considerations for Cos. With Remote Employees](#) and [Controversy Brewing over Massachusetts Taxation of Nonresidents](#).