

## Connecticut Provides 2020 Tax Relief for Telecommuting Employees

Connecticut has passed a bill that provides tax relief for 2020 only for employees working remotely who would have potentially had their wages taxed by two states ([H.B. 6516](#)). The bill provides particular relief to Connecticut residents who are required to pay income taxes for the 2020 tax year to other states that use some version of the “convenience of the employer” rule, for example, providing relief to Connecticut residents who telecommuted to Massachusetts and New York-based employers.

Currently six states formally impose some version of the convenience of the employer rule: Arkansas, New York, Connecticut,<sup>1</sup> Delaware, Nebraska and Pennsylvania. Additionally, in response to the COVID-19 pandemic, Massachusetts published an emergency regulation declaring that income earned by a nonresident working outside of Massachusetts would be considered Massachusetts source income if, prior to the COVID-19 state of emergency, the employee performed such services in Massachusetts.

Generally, states using the convenience of the employer rule treat wages paid to nonresident telecommuting employees as wages sourced to that state, if the employee telecommutes for his or her own personal convenience. Formulations may differ slightly, but Nebraska imposes a fairly standard version of the convenience of the employer rule that may be considered a representative example. Generally, Nebraska may only tax nonresidents if they perform services in Nebraska. However, “if the nonresident’s service is performed without Nebraska *for his or her convenience*, but the service is directly related to a business, trade, or profession carried on within Nebraska and, except for the nonresident’s convenience, the service could have been performed within Nebraska, the compensation for such services shall be Nebraska source income.”<sup>2</sup> In other words, Nebraska—and other convenience of the employer states—may tax a nonresident for work conducted outside of the state, if such work was conducted outside the state for the employee’s convenience.

### *Specific Provisions of the Connecticut Bill*

The bill provides Connecticut residents with a full credit for income taxes paid to another state, if the Connecticut resident worked in Connecticut but paid income taxes to another state due to that other state’s convenience of the employer rule. This relief was not provided under prior Connecticut law.

Specifically, the bill provides that for the taxable year commencing on January 1, 2020, “any resident who paid income tax to any other state that uses a convenience of the employer rule shall be allowed a credit against such resident’s Connecticut income tax, for the tax paid to such other state on income earned by such resident while working remotely” from Connecticut.

<sup>1</sup> It should be noted that the convenience of the employer rule imposed by Connecticut is unique, as Connecticut only imposes such tax on nonresidents that are residents of a state that also applies a convenience of the employer rule.

<sup>2</sup> [316 Neb. Admin. Code § 22-003.01C\(1\)](#) (emphasis added).

The bill also provides that a full credit will be allowed in the 2020 tax year for “any resident who paid income tax to any other state that has enacted a law or rule requiring a nonresident employee to pay nonresident income tax to such other state on income earned while such nonresident employee was working remotely from this state due to COVID-19 if, immediately prior to March 11, 2020, such nonresident employee was performing such work within such other state....” This provision of the bill appears to be a clear response to the emergency regulation adopted by Massachusetts.

Finally, the bill also establishes that Connecticut will not consider the activities of any employees who worked remotely in Connecticut due to COVID-19 during the 2020 tax year in determining whether an employer has nexus with Connecticut (and thus may be subject to entity-level state taxation).

### *Takeaways*

It should be noted that the scope of relief provided by the bill is limited to 2020 only: the Connecticut income tax credits are only allowed for taxes paid to another state that imposes a convenience of the employer rule (or something similar) for the 2020 tax year. This was emphasized in a bulletin issued by the Commissioner of the Connecticut Department of Revenue.<sup>3</sup> The bill thus represents a temporary measure intended to provide relief to Connecticut residents who otherwise could face a burden of double taxation during the COVID-19 pandemic in 2020. Although the relief provided by the bill is temporary, however, it is not insignificant—the Connecticut Office of Fiscal Analysis estimated that if the credit did not apply, Connecticut residents would owe approximately \$300 million more in personal income tax payments for the 2020 tax year.

The Connecticut Department of Revenue also issued a second bulletin in response to certain frequently asked questions.<sup>4</sup> The bulletin addressed when a taxpayer would be considered to be working remotely “due” to COVID-19 (and thus eligible for the credit). In Answer Two, the bulletin indicated that such determinations are “largely dependent upon specific facts and circumstances,” and Connecticut residents should document such facts accordingly. Relevant documentation suggested by the bulletin include “copies of emails, memoranda, policies, or other guidance issued by ... employers regarding the status of their out-of-state offices.” The bulletin acknowledged, however, that any of a number of different circumstances may have prompted a Connecticut resident to work remotely from home “due” to COVID-19, including medical conditions, fears of illness, promotion of social distancing, or child care needs. The bulletin explains that the situations described within the bulletin are “‘due’ to COVID-19,” but that that the list of situations is not exhaustive. Additionally, in Answers Four and Five, the bulletin indicated that Connecticut will not impose its income tax on nonresidents who were assigned to an office or work location in Connecticut but worked remotely during taxable year 2020 in a state that either employs a “convenience of the employer” rule, or has enacted a law or rule requiring a nonresident employee to pay nonresident income tax to such state (*e.g.*, Massachusetts, Rhode Island).

The convenience of the employer doctrine and the rights of states to impose taxes on nonresident telecommuters will continue to be an issue moving forward. New Hampshire filed suit in the U.S. Supreme

<sup>3</sup> State of Connecticut Department of Revenue Services, Commissioner’s Bulletin: *Connecticut State Senate Passes H.B No. 6516 and Immediately Transmits the Legislation to Governor Lamont* (posted March 5, 2021).

<sup>4</sup> State of Connecticut Department of Revenue Services, Taxpayer Services Special Bulletin: *Taxpayer Services Division Update to Commissioner’s Bulletin of March 4, 2021* (TSSB 2021-1).

Court, challenging the tax imposed by Massachusetts on nonresidents who prior to the COVID-19 pandemic had performed such services in Massachusetts. As the Supreme Court determines whether to hear the case, several states, including Connecticut, have filed an amicus brief supporting New Hampshire's position. In the amicus brief, the amici summarize the persistent importance of the issue: "to avoid problems of double taxation, many States that levy income taxes grant credits in whole or in part to their residents for taxes paid to other States. Whether Massachusetts or other States can levy taxes directly on the income of nonresidents working from home affects billions of dollars in state tax revenue."<sup>5</sup>

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<sup>5</sup> Amicus Curiae Brief For States Of New Jersey, Connecticut, Hawaii, and Iowa, *available at* <https://www.nj.gov/oag/newsreleases20/2020-1222-NH-v-MA-Amicus-Brief.pdf>.