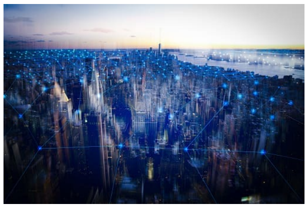

Working Remotely: Can It Impact Your State and Local Tax Compliance?

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Categories:

Coronavirus Response Team
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As COVID-19 continues on, more and more businesses and employers are either authorizing or requiring employees to work remotely — stated otherwise, work from home. For federal tax purposes, this is really a non-event, but for state and local tax (SALT) purposes, remote work by employees raises a host of issues. Businesses and employers should be preparing for the impact of requiring remote workers.

One area of concern is tax withholding — specifically, does the employer now have a sufficient "place of business" in the remote location to require home jurisdiction withholdings? To this end, many states which border others and more concentrated population areas have "treaties" in place which designate how state tax withholdings are to occur. Using Kentucky as an example, it borders seven states and in connection therewith has in place a treaty with the states of Illinois, Ohio, Virginia and West Virginia; and it also has treaties with Michigan and Wisconsin as well. This may be the answer in that circumstance.

Another area of concern is whether having an employee working remotely in another jurisdiction creates "nexus" with such remote jurisdiction for the employer, not for withholding tax purposes but for income or franchise tax purposes. In essence, has the remote location become a place of business for the employer?

State unemployment tax issues also surface — into which states unemployment insurance program should contributions be made, the employer jurisdiction or the remote jurisdiction?

And what about local tax issues, such as cities and municipalities or other governmental jurisdictions such as school districts which have local income or franchise-type, or even payroll tax obligations — does the remote worker create compliance obligations on the part of the employer?

There is limited guidance on state and local tax matters with respect to whether temporary remote workers give rise to a taxable presence, or using federal/international tax principles, a "permanent establishment," all in the context of federally mandated or state-imposed travel restrictions and health orders. Another hot spot for business.

For more information as to how the spread of COVID-19 creates tax implications, see Tax Law Defined and Frost Brown Todd's Coronavirus Resource Page.

To provide guidance and support to clients as this global public-health crisis unfolds, Frost Brown Todd has created a Coronavirus Response Team. Our attorneys are on hand to answer your questions and provide guidance on how to proactively prepare for and manage any coronavirus-related threats to your business operations and workforce.