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State Tax Compliance in the World of Telecommuting

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Today's mobile and remote workforce offers tremendous flexibility for nonprofit workers, but also creates challenges for nonprofit employers. A few examples of how nonprofits are incorporating remote work arrangements into everyday practices include: program directors and healthcare workers may telecommute because they are constantly moving between work locations and providing personal services to clients in different locations; staff members may elect to work a few days a week from home temporarily, so they can be closer to a family member with special needs; and nonprofit employees may be hired to regularly work from a satellite location. Each of these arrangements may help a nonprofit attract or retain valued talent but may also create unexpected payroll reporting obligations and potential tax-withholding liabilities for unsuspecting nonprofit employers.

Framing the Issues Through a State-Specific Lens

When an employee performs services in a state, the wages earned by that individual are typically subject to state income tax (SIT) withholding on the part of the employer. While this is an easy requirement to fulfill when someone is working in one state where the employer already has operations, the ability to comply with SIT

requirements can become exponentially more difficult for an organization that has a mobile or remote workforce. Most states with an income tax require employers to withhold on *all* earnings of an employee performing services within their state, whether or not the individual is a resident or nonresident of that state. Exceptions may relieve an employer from the duties to report wages and withhold taxes from multiple jurisdictions for the same employee. These exceptions are typically based on such things as the existence of reciprocal agreements between states, the addition of activity-based exceptions, or the inclusion of *de minimis* allowances for time spent, or dollars earned, in a nonresident state. These exceptions, of course, create their own set of complexities, as they then require the employer to monitor and tax accordingly.

Nationally about 3.7 million employees – 2.8 percent of the workforce – work from home at least half the time (Source: [GlobalWorkplaceAnalytics.com study](https://www.globalworkplaceanalytics.com/study)). This growing trend requires employers to be aware of the rules that govern each employee's situation, and to carefully monitor this increasingly common workplace practice.

Tax Issues Governing Telecommuting & Work-from-Home Arrangements

When a nonprofit employee regularly works from home, several initial questions come to mind: How do you accurately withhold income taxes on their behalf? What about non-payroll tax issues that may be triggered by an employee working in a remote location?

A few states (New York, Delaware, Pennsylvania and Nebraska) require specific documentation relating to telecommuting but most states have not yet adopted payroll requirements specifically to address remote workers. As just one example, the New York State Department of Taxation and Finance addresses telecommuting in [Tax Services Bulletin \(TSB\)-M-06\(5\)I](#). This TSB focuses on the New York tax treatment of nonresidents and the application of the “Convenience of the Employer” test to telecommuters and other employees, whose assigned or primary work location is in New York, but who perform services at a home office located outside of New York. TSB-M-06(5)I provides that for “*a taxpayer whose assigned or primary office is in New York State, any normal work day spent at [his/her] home office will be treated as a day worked outside the state if the taxpayer’s home office is a bona*

fide employer office.” The TSB continues by defining what constitutes a “bona fide employer office” for purposes of the telecommuting test, pointing to a variety of factors (e.g. special facilities not available at the employer site; home office as a requirement/condition of employment; client meetings held there, etc.) as determinative in proving the home office is a bona fide employer office. If the home office is considered to be a bona fide place of business of the employer, then state income taxes should be withheld in that home office jurisdiction.

Compliance Challenges

Remote work arrangements can raise additional challenges outside of the SIT world too, such as the requirements to register the nonprofit employer as a business in a state where a remote worker may be providing services; to comply with state unemployment insurance, and state sales/use taxation laws; and to understand and comply with local wage and hour regulations. Nonprofit employers have a legal responsibility to know where employees both work and reside so that the nonprofit can comply with wage and hour laws, as well as the appropriate tax withholding requirements. Understanding how the applicable states’ and local payroll tax rules and regulations apply is vital to successful telecommuting policies at any nonprofit.

In the current environment of mobility, employers often allow a great amount of flexibility for their employee’s work arrangements but may fail to recognize that such flexibility can create added layers of responsibility and risk. A typical mistake a nonprofit may make is to fail to develop a clear link between the specific situation of a remote worker and the application of all the nonprofit’s HR policies and practices.

For example, an employer will allow an individual to work from a home location without verifying the ability of the payroll system to withhold income tax in the employee’s state, or without establishing a legal entity able to transact business in the state. This accommodation to the employee can create deeper issues for the organization.

Another barrier to compliance might be as straightforward as a nonprofit’s payroll and/or human resource systems’ constraints and limitations that could prevent full compliance in this area. For instance, implementing a payroll system with a linked HR component may at least identify potential issues before they occur. A combination of technology tools and a strong resource in this space, either internally or externally, may serve to streamline a labor-intensive compliance process. A first

step for nonprofit employers in evaluating their overall exposure may be to identify their current employment footprint, such as by simply confirming each employee's home and work location(s). Once a nonprofit has an understanding of its telecommuting footprint, it can formulate a compliance policy that considers such items as the specific risk exposure, the nonprofit's culture, and its ability to access resources and guidance for implementation and oversight of policies designed specifically for remote work. Ideally, a nonprofit's policy(ies) will reflect alignment between the organization's culture and its business needs, including legal compliance. With these two pieces – culture and policies – in balance, organizations should be able to effectively manage telecommuters and comply with state income tax and wage withholding requirements as well as any other state laws that may be triggered by remote workers.

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