

# Electronic Alert

Volume 25, Issue 17

June 2, 2022

## Where Do My Employees Live for Tax Purposes?

By Jeff Robertson & Iris Tilley

If you have employees working out-of-state and have been wondering how to manage income tax withholdings for these employees, you are not alone. In this COVID world, fully remote and hybrid work is the norm for many office jobs, raising plenty of tax questions.

When employees were first sent home in an effort to limit community spread, many states informally or formally issued “COVID pause” policies to the specific state rules, similar in operation to “convenience of employer laws.” However, as the pandemic has shifted, numerous states have ended these pandemic policies, leading to confusion for many employers with remote workers.

This E-Alert focuses exclusively on tax laws, but stay tuned for a future E-Alert addressing local laws and leave.

### Tax Laws

**Convenience of Employer Laws** – Most notably found in New York, convenience of employer laws are designed to stop tax avoidance by individuals working remotely. Under these laws, if an employee is working for an employer in another state, and is working on a remote basis solely for their own personal benefit, they are taxed in the state in which their employer is located. Oregon does not have a convenience of employer law. Convenience of employer laws often result in double taxation because under these laws, an employee may be taxed both by their employer’s home state and the state in which they perform their work. For example, if Oregon had a similar rule in place, an employee working for an Oregon employer in California could face taxation in both Oregon and California.

**Location-Based Taxation** – States without convenience laws usually have tax provisions requiring employers to withhold taxes based on where the employee performs the work. This is how the rules in Oregon currently operate. Location-based taxation leads to a question of whether the employee is performing their work in the state in which the employer is located, or whether the employee is performing their work in the state in which they reside when all direction and control comes from the employer’s state.

**What is the Future?** States that have lost revenue due to employees’ migration to other states will want to implement convenience laws, whereas states that have received the remote workers will want to retain location-based taxation.

**What is the Now?** Under current rules, an employer must withhold Oregon state income tax from all wages paid to Oregon *resident* and *nonresident* employees working in Oregon. There is no Oregon requirement to withhold for Oregon residents if an employer has no employees in the State of Oregon. However, Oregon asks employers to register and courtesy-withhold for these resident employees.

Where employees perform work in other states, employers must evaluate whether states have a convenience of employer rule or a location-based taxation rule. Employers also need to be aware of creating nexus with states in which their employees physically reside and may wish to take a position that all of their employees work from Oregon (as employees working out-of-state can seek a refund for taxes paid to the State of Oregon). There is no easy answer or best practice, and every situation is different.

No matter your remote work challenge, Barran Liebman is here to offer guidance and support. Our attorneys partner with employers across the country to navigate the special challenges posed by remote work.

*Should you have any remote work tax-related questions, contact Jeff Robertson or Iris Tilley at 503-276-2140 or 503-276-2155, or at [jrobertson@barran.com](mailto:jrobertson@barran.com) or [itilley@barran.com](mailto:itilley@barran.com). For any other remote work questions, contact anyone from our [remote work team](#).*