

Maryland

Tax Alert



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EMPLOYER WITHHOLDING REQUIREMENTS FOR TELEWORKING EMPLOYEES DURING THE COVID-19 EMERGENCY

On March 5, 2020, Governor Lawrence J. Hogan, Jr. proclaimed a state of emergency and a catastrophic health emergency related to COVID-19.

The following tax alert addresses withholding questions received by the Office of the Comptroller of Maryland due to the unprecedented situation caused by the COVID-19 pandemic.

Employer Withholding Requirements

Maryland employer withholding requirements are not affected by the current shift from working on the employer's premises to teleworking because taxability is determined by the employee's physical presence. Generally, Maryland imposes income tax, and therefore a withholding requirement on employers, for employees domiciled in Maryland, statutory residents of Maryland¹, and non-residents receiving Maryland-sourced income. Income is deemed Maryland-sourced income when the income is compensation for services performed in Maryland. Residents of Virginia, Washington D.C., West Virginia, and Pennsylvania who earn wages, salaries, tips, and commission income for services performed in Maryland are exempt from Maryland state income tax, and therefore, withholding, because Maryland has a reciprocal agreement with these states. Unlike the aforementioned states, Delaware has not entered into a reciprocal agreement with the state of Maryland. Compensation paid to a Maryland nonresident who is teleworking in Maryland is Maryland-sourced income, and therefore, subject to withholding.

The Comptroller's Office does not intend to change or alter the facts and circumstances it has consistently used to determine nexus or income sourcing. As has always been the case, the Office reviews and considers the specific facts and circumstances of each taxpayer in order to make a fair determination. In doing so going forward, the Office understands that many businesses have been required or otherwise found it necessary during the COVID-19 health emergency to temporarily alter their workplace model and deployment of their employees. The Office further understands that this was done in order to comply with the various gubernatorial

¹ Active duty military and the spouses of active duty military are not deemed statutory residents when their presence in Maryland is solely the result of military orders.

executive orders and health department and CDC recommendations on social distancing. Consequently, the Office will consider the temporary nature of a business' interim workplace model and employee deployment in light of the current health emergency in making a nexus determination, whether the business correctly sourced income, and whether the business properly withheld and reported employee state withholding.

Frequently Asked Questions:

1. My business is based in Virginia with offices in Maryland and Washington D.C. Both of my employees are Maryland residents. Generally, one works in the Maryland office and the other in the Washington D.C. office. Both are presently teleworking in Maryland. Do I have a Maryland withholding requirement?

Yes. Your employees are Maryland residents and are subject to tax on all income earned.

2. My business is based in Maryland with offices in Virginia and Washington D.C. Both of my employees are Maryland residents. One works in the Virginia office and the other in the Washington D.C. office. Do I have a Maryland withholding requirement?

Yes. Your employees are Maryland residents and are subject to tax on all income earned.

3. My business is based in Virginia with offices in Maryland and Washington D.C. Both of my employees are Virginia residents. Generally, one works in the Maryland office and the other in the Washington D.C. office. Both are teleworking in Virginia. Do I have a Maryland withholding requirement?

No. Your employees are not Maryland residents and they are not performing services in the state. Even if they were providing services in the state, they would be exempt from withholding due to Maryland's reciprocal agreement with Virginia.

4. My business is based in Delaware with an office in Maryland. My employee resides in Delaware but generally works in the Maryland office. He is currently teleworking in Delaware. Do I have a Maryland withholding requirement?

Yes. Delaware has not entered into a reciprocal agreement with Maryland. You have a withholding requirement for the wages paid as compensation for services rendered in the Maryland office because it is Maryland-sourced income, but no withholding requirement for the wages paid as compensation during the time your employee is teleworking.

5. My business is based in Delaware with an office in Maryland. My employee resides in Delaware but generally works in the Maryland office. He is currently teleworking in Maryland. Do I have a Maryland withholding requirement?

Yes. Delaware has not entered into a reciprocal agreement with Maryland. You have a withholding requirement for the wages paid as compensation for services rendered in the Maryland office and those paid for services rendered while teleworking in Maryland.