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– WORKING DRAFT –

DIRECTIVE

Working Draft Directive 21-XX: Personal Income Tax Guidance for Employees who Telecommuted in 2020 due to the COVID-19 State of Emergency

DATE:

02/11/2021

REFERENCED SOURCES:

[Massachusetts General Laws](https://malegislature.gov/Laws/GeneralLaws) (https://malegislature.gov/Laws/GeneralLaws)

TABLE OF CONTENTS

I. Introduction (#i-introduction)

II. Issues (#ii-issues)

III. Directives (#iii-directives)

IV. Discussion (#iv-discussion)

I. Introduction

This Directive is being issued to assist individuals who telecommuted in 2020 because of the COVID-19 pandemic with the preparation of their 2020 personal income tax returns. Specifically, the Directive explains the rules applicable to (i) non-residents who worked in Massachusetts prior to the Massachusetts COVID-19 state of emergency,^{[1] (#_ftn1)} but began working remotely from a location outside the Commonwealth due to a “Pandemic-Related Circumstance,” as defined in 830 CMR 62.5A.3,^{[2] (#_ftn2)} and (ii) residents who worked in another state prior to the Massachusetts COVID-19 state of emergency, but began working remotely from a location within the Commonwealth due to a Pandemic-Related Circumstance. The Directive refers to these two groups of employees as “non-resident telecommuting employees” and “resident telecommuting employees,” respectively. This Directive does not apply to the sourcing of wage income of employees earned from a new job that commenced after March 10, 2020.

II. Issues

- a. How do non-resident telecommuting employees and resident telecommuting employees determine the amount of their wages that is subject to the personal income tax in 2020?
- b. Do days spent in Massachusetts by individuals in 2020 due to a Pandemic-Related Circumstance count for purposes of establishing Massachusetts statutory residency under the 183-day presence test?

III. Directives

- a. For 2020, non-resident telecommuting employees who worked in Massachusetts prior to the Massachusetts COVID-19 state of emergency and who later telecommuted from locations outside Massachusetts due to a Pandemic-Related Circumstance must continue to source their wages earned from such subsequent employment to Massachusetts. Non-resident employees who, prior to the Massachusetts COVID-19 state of emergency, apportioned their wages to Massachusetts pursuant to 830 CMR 62.5A.1(5)(a) must determine the amount of their wages that is Massachusetts source income based on either the percentage of their work days spent in Massachusetts during the period January 1 through February 29, 2020, or the apportionment percentage properly used to determine the portion of their wages from that employer that constituted Massachusetts source income as reported on their 2019 Massachusetts personal income tax return.

For 2020, resident telecommuting employees who worked in a state other than Massachusetts prior to the Massachusetts COVID-19 state of emergency and subsequently telecommuted from Massachusetts due to a Pandemic-Related Circumstance will be eligible for a credit for taxes paid to that other state to the extent allowed under M.G.L. c. 62, § 6(a) if the other state applies similar sourcing rules.

b. Yes, individuals who spent more than 183 days in, and maintained a permanent place of abode in, Massachusetts during 2020 were Massachusetts statutory residents for such year, regardless of whether the 183-day threshold was exceeded because of a Pandemic-Related Circumstance.

IV. Discussion

Background

For personal income tax purposes, Massachusetts residents are generally taxed on all of their income from whatever source derived. M.G.L. c. 62, § 2. Non-residents are taxed on items of gross income from sources within the Commonwealth, including income derived from or connected with any trade or business, including any employment, in Massachusetts. M.G.L. c. 62, § 5A(a).

A. Personal Income Tax Rules for Wages Earned by Non-resident Telecommuting Employees and Resident Telecommuting Employees for 2020

In general, where a non-resident earns or derives income from sources both within Massachusetts and elsewhere, the non-resident must either allocate or apportion this income to determine the amount of Massachusetts source income in accordance with the rules prescribed in 830 CMR 62.5A.1. The income of a non-resident employee compensated on an hourly, daily, weekly, or monthly basis must be apportioned to Massachusetts where no exact determination of amounts earned or derived in Massachusetts is possible. That apportionment is determined by multiplying the employee's gross income, wherever earned, by a fraction, the numerator of which is the number of days spent working in Massachusetts and the denominator of which is the total working days. See 830 CMR 62.5A.1(5)(a).

In response to the COVID-19 pandemic, the Department promulgated 830 CMR 62.5A.3, "Massachusetts Source Income of Non-Residents Telecommuting due to the COVID-19 Pandemic," to explain the personal income tax rules applicable to non-resident employees of in-state employers telecommuting from a location outside Massachusetts due to a Pandemic-Related Circumstance. 830 CMR 62.5A.3(3) provides that all wages received by a non-resident employee who, prior to the Massachusetts COVID-19 state of emergency, worked in Massachusetts, and who began telecommuting from outside Massachusetts due to a Pandemic-Related Circumstance, was to continue to be treated as Massachusetts source income subject to both personal income tax under M.G.L. c. 62 and personal income tax withholding.

830 CMR 62.5A.3(3)(b) also provides rules for non-resident employees who, prior to the Massachusetts COVID-19 state of emergency, determined their Massachusetts source income by apportioning their days spent in Massachusetts in accordance with 830 CMR 62.5A.1(5)(a). Such non-resident telecommuting employees must determine the portion of their wages that constitutes Massachusetts source income for 2020 based on either (1) the percentage of their work days spent in Massachusetts during the period January 1 through February 29, 2020 as determined under 830 CMR 62.5A.1(5)(a), or (2) if they worked for the same employer in 2019, the apportionment percentage properly used to determine the portion of their wages from that employer that constituted Massachusetts source income as reported on their 2019 Massachusetts personal income tax return.

830 CMR 62.5A.3 also explains that a resident employee who, prior to the Massachusetts COVID-19 state of emergency, worked in a state other than Massachusetts, but subsequently telecommuted from a location in Massachusetts due to a Pandemic-Related Circumstance, is eligible for a credit for taxes paid to that other state to the extent provided in M.G.L. c. 62, § 6(a) if the other state applies similar sourcing rules.

B. Statutory Residency During 2020

Under M.G.L. c. 62, § 1(f), a person is a statutory resident if he or she maintains a permanent place of abode in Massachusetts and spends in the aggregate more than 183 days of the tax year in Massachusetts, including days spent partially in and partially out of Massachusetts, or is otherwise domiciled in Massachusetts. The statute does not take into account the reasons for which the person is present in Massachusetts in determining whether the 183-day threshold is satisfied. M.G.L. c. 62, § 1(f). As explained in TIR 95-7, a permanent place of abode is generally considered to mean a dwelling place continually maintained by a person, whether or not owned by such person, and will include a dwelling place owned or leased by a person's spouse. The 183-day presence test for determining whether a person is a resident applied during 2020, and that day count would have included days spent in Massachusetts due to a Pandemic-Related Circumstance.

The following examples illustrate these rules.

Example 1: Jolene, a non-resident, worked for Employer A in both 2019 and 2020. For 2019, Jolene properly determined that she worked a total of 240 days for Employer A, working at Employer A's Massachusetts office on 60 of these days and telecommuting from her home in another state for the remaining 180 days. Accordingly, Jolene properly determined her Massachusetts source income by apportioning 25% of her wages from Employer A to Massachusetts on her 2019 Massachusetts personal income tax return. During the period January 1 through February 29, 2020, Jolene properly determined that she worked for a total of 40 days for Employer A, working 16 days at Employer A's Massachusetts office and 24 days telecommuting from her home in the other state. Subsequently, Jolene worked for Employer A entirely from her home in the other state due to a Pandemic-Related Circumstance.

Because she worked for the same employer in both 2019 and 2020, Jolene may determine her Massachusetts source income for the period March 10, 2020 through December 31, 2020 in one of two ways. She may apportion 40% of her wages for this period to Massachusetts based on her days spent working in Massachusetts and in the other state during the period January 1 through February 29, 2020. Alternatively, Jolene may use the 25% apportionment percentage from her 2019 Massachusetts personal income tax return.

Example 2. Same facts as Example 1, except that Jolene switched jobs and began working for a different employer, Employer B, starting January 1, 2020. During the period January 1 through February 29, 2020, Jolene worked a total of 40 days for Employer B, working 16 days at Employer B's Massachusetts office and 24 days telecommuting from her home in another state. Because Jolene did not work for the same employer in 2019 and 2020, she must determine the portion of her wages from Employer B that constitutes Massachusetts source income for the period March 10, 2020 through December 31, 2020 based on the percentage of work days spent in Massachusetts during the period January 1 through February 29, 2020. Therefore, she must apportion 40% (16 days out of 40) of her wages for that period to Massachusetts.

Example 3. Same facts as Example 1, except that Jolene begins a new job working for Employer C on April 1, 2020. Employer C is a business with work locations in Massachusetts. Prior to the COVID-19 pandemic, the position for which Jolene was hired was performed in Massachusetts. In response to the COVID-19 pandemic, Employer C adopted a remote work policy and required that Jolene's position be performed remotely. From April 1, 2020 through December 31, 2020, Jolene performed her work for Employer C entirely from her home in another state. Because Jolene began her employment with Employer C after March 10, 2020, the rules in 830 CMR 62.5A.3(3) do not apply to the work she performed for Employer C. Consequently, none of Jolene's wages from Employer C constituted Massachusetts source income for 2020.

Example 4. Joseph is a non-resident domiciled in another state. Prior to the start of the Massachusetts COVID-19 state of emergency, Joseph worked entirely outside of Massachusetts for Employer D. After the commencement of the state of emergency Joseph began to telecommute from his apartment in the other state. During the summer of 2020, Joseph retained his apartment, but also chose to temporarily rent a home on Cape Cod for two months, during which time he telecommuted for Employer D from Massachusetts. He remained at the home for 62 days. Joseph maintained his apartment in the other state during those two months and was not present in Massachusetts at any other time during 2020. i

The home Joseph temporarily rented in Massachusetts was not a permanent place of abode and Joseph spent a total of 62 days in Massachusetts in 2020. Therefore, Joseph was not a Massachusetts statutory resident for the year. Note that the 62 days Joseph spent in Massachusetts would have counted as days in Massachusetts for purposes of the 183-day rule if Joseph had maintained a permanent place of abode in the state during 2020. The rules in 830 CMR 62.5A.3(3) do not apply to the work Joseph performed for Employer D while in Massachusetts because during that period Joseph was neither (i) a non-resident who previously worked in Massachusetts and began telecommuting from out-of-state due to a pandemic-related circumstance, nor (ii) a resident who previously worked outside of Massachusetts but began telecommuting from Massachusetts due to a pandemic-related circumstance. Therefore, the wages Joseph received as compensation from Employer D for his work performed in Massachusetts will be sourced to Massachusetts pursuant to 830 CMR 62.5A.1(5)(a).

Example 5. Johnny is a Massachusetts resident who, prior to the Massachusetts COVID-19 state of emergency, worked for Employer E from that employer's location in a different state. In response to the COVID-19 pandemic, Employer E adopted a remote work policy. As a consequence, Johnny telecommuted from his home in Massachusetts for the remainder of 2020. As a Massachusetts resident, Johnny must report all of his wages from Employer E on his 2020 Massachusetts personal income tax return. However, the state Johnny worked in prior to the Massachusetts COVID-19 state of emergency requires that Johnny's wages earned while telecommuting in Massachusetts be sourced to that state for personal income tax purposes in whole or in part. Johnny may claim a credit for income taxes paid to such state to the extent provided under M.G.L. c. 62, § 6(a).

[1] (#_ftnref1) For purposes of the Directive, the term “prior to the Massachusetts COVID-19 state of emergency” refers to the period beginning January 1, 2020 and ending on March 10, 2020, the date on which Governor Baker declared the Massachusetts COVID-19 state of emergency. See Governor’s Declaration of a State of Emergency to Respond to COVID-19, issued March 10, 2020.

[2] (#_ftnref2) A Pandemic-Related Circumstance generally includes the following situations: (a) a government order issued in response to the COVID-19 pandemic, (b) a remote work policy adopted by an employer in compliance with federal or state government guidance or public health recommendations relating to the COVID-19 pandemic, (c) the worker’s compliance with quarantine, isolation directions relating to a COVID-19 diagnosis or suspected diagnosis, or advice of a physician relating to COVID-19 exposure, or (d) any other work arrangement in which an employee who performed services at a location in the state prior to the state’s COVID-19 state of emergency performs such services for the employer from a location outside the state. See 830 CMR 62.5A.3(2).

REFERENCED SOURCES: [Massachusetts General Laws \(https://malegislature.gov/Laws/GeneralLaws\)](https://malegislature.gov/Laws/GeneralLaws)