

AMERICAN PAYROLL ASSOCIATION

April 17, 2020

The Honorable Nancy Pelosi
Speaker of the House
U.S. House of Representatives
1236 Longworth House Office Building
Washington, DC 20515

The Honorable Mitch McConnell
Majority Leader
U.S. Senate
317 Russell Senate Office Building
Washington, DC 20510

Re: Request for COVID-19 Relief for Employees Temporarily Teleworking in their Home State

Dear Speaker Pelosi and Senate Majority Leader McConnell:

The American Payroll Association (APA) understands that states and employers are facing unprecedented challenges in navigating the economic impact of COVID-19. We are writing to suggest one measure that Congress could offer to substantially reduce the extraordinary burden brought about by the COVID-19 health crisis and travel restrictions enacted in most states: consider a relief measure to temporarily suspend state temporary presence sourcing rules for income tax withholding for the duration of the crisis.

The relief is for employees that normally commute across state lines to work. In situations such as the COVID-19 crisis taxes are generally withheld and remitted to the state in which work is performed. APA believes that the individual tax burden will not change because of this request; i.e., affected individuals already file income tax returns in both their state of residence and work state. APA is also asking state tax commissioners to take action to avoid the administrative burden on employers in changing these arrangements; however, any suspension of such rules may only be effective if all states take the same action in the same way, which seems unlikely.

Consequently, APA is asking that Congress consider action to avoid further legal and financial stress on employers that will otherwise face fines, audits and potential assessments due to the national COVID-19 health crisis.

About APA

APA is a nonprofit organization serving the interests of more than 20,000 payroll professionals across the United States, who are responsible for the administrative task of properly withholding and remitting state and federal taxes. APA's primary mission is to educate its members and the payroll industry about the best practices associated with paying America's workers while complying with applicable federal, state, and local laws and regulations. APA members are directly responsible for calculating wages and tax withholding for their employers.

Flexibility in Enforcement Is Necessary During a National Emergency

The issue relates to longstanding state income sourcing rules for workers that are temporarily working in a state other than their primary work location. Absent congressional action, many employers would be required to change tax withholding arrangements for employees who are now required to work from home, when their home is in a different state.

States have diverse rules that require employers to withhold income taxes and report employees, generally based on where work is performed. In the case of temporary assignments, special rules and thresholds apply, often based on the number of days that a worker is present in the state (e.g., 14, 15 or 30 days) and/or an earnings threshold.

Because of the COVID-19 health crisis, most states have ordered employees in many industries to work from home, and prohibited travel to the normal workplace. To the extent that employees normally commuted across state lines, these temporary travel restrictions are expected to trigger legal requirements to change state tax withholding settings for affected employees in payroll systems.

The forecast for the duration of this health crisis is unclear, but work-from-home orders seem likely to persist beyond the threshold days/amounts that would normally require recognition and changes to withholding.

Thank you for your consideration. We would be pleased to discuss this further if it would be helpful.

Sincerely,



William Dunn, CPP
Director, Government Relations
American Payroll Association



Alice P. Jacobsohn, Esq.
Senior Manager, Government Relations
American Payroll Association

Cc:

APA IRS Issues Subcommittee Chairs:
Rebecca Harshberger, CPP
Jon Schausten, CPP

APA State and Local Topics Subcommittee Chairs:
Pete Isberg,
Carlanna Livingstone, CPP
Bruce Phipps, CPP