

State Tax Day - Current, S.4, Massachusetts—Corporate, Personal Income Taxes: Final Sourcing Rules for COVID-19 Telecommuters Adopted, (Oct. 21, 2020)

Massachusetts adopted final personal income tax sourcing rules for employees who telecommute during the COVID-19, or coronavirus, pandemic. The final rules replace emergency rules.

General Rule

Employers must source compensation to Massachusetts, and withhold income tax, for personal services performed by a nonresident:

- who, immediately before the Massachusetts COVID-19 emergency, was an employee engaged in performing those services in the state; and
- who is performing those services from a location outside the state due to pandemic-related circumstances.

Pandemic-related circumstances include:

- a government order issued in response to the COVID-19 pandemic;
- a remote work policy adopted by an employer to comply with federal or state government guidance or public health recommendations on the COVID-19 pandemic;
- employee compliance with quarantine or isolation directives on a diagnosis or suspected diagnosis of COVID 19 or the advice of a physician on COVID-19 exposure; or
- any other remote COVID-19 work arrangement during the period that the rules are in effect.

Apportionment Based on Working Days in Massachusetts

Nonresident employees who determined Massachusetts source income before the COVID-19 emergency by apportioning based on days spent working in Massachusetts must continue to do so. A nonresident employee must apportion wage income based on:

- the percentage of the employee's work days spent in Massachusetts during the period January 1 through February 29, 2020; or
- if the employee worked for the same employer in 2019, the percentage used to determine the Massachusetts source income on the employee's 2019 return.

Credit for Taxes Paid to Other States

Massachusetts will provide a credit for income taxes paid to another state by residents:

- who, immediately before the Massachusetts COVID-19 emergency, was an employee engaged in performing services from a location outside the state; and
- who began performing those services in Massachusetts due to pandemic-related circumstances.

It also will not require withholding from the employer if the employer must withhold income tax for the employee in the other state.

Effective Date

The sourcing rules apply to wage income from employee services performed beginning March 10, 2020 through the earlier of:

- December 31, 2020; or

- 90 days after Massachusetts Gov. Charlie Baker gives notice that the state of emergency declaration is no longer in effect.

830 CMR 62.5A.3, Massachusetts Department of Revenue, adopted October 16, 2020 and effective as noted