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## St. Louis payroll earnings tax does not apply to remote work outside the city, Missouri Circuit Court rules

In January 2023, the Missouri Circuit Court, 22nd judicial circuit, decided in *Boles v. City of St. Louis* that employees who lived and worked outside of St. Louis are entitled to a refund of the St. Louis payroll earnings taxes withheld from their pay because the tax applies only to days of work physically performed within the city. The decision applies to earnings taxes withheld in 2020 and beyond. ([Boles v City of St. Louis: Cause No. 2122-CC00713.](#))

### St. Louis earnings tax

St. Louis City Code, [Chapter 5.22](#), first adopted in 1959, imposes a payroll earnings tax of 1% that applies to the earnings of its residents and, under Section 40(C), to the earnings of nonresidents that are “reasonably attributable to work done, or services performed or rendered, in the City.”

The City of St. Louis [instructs](#) resident employers that they must withhold earnings taxes from the wages of all employees “regardless of employee work location.” In other words, earnings tax withholding applies to all St. Louis employees, including those who work remotely outside the city.

In [special instructions](#) for nonresident employees, the City of St. Louis states that nonresidents filling for a refund of the earnings tax for whole days they worked outside of St. Louis must complete supplemental Form [E-1RV](#). Employers are required to sign Form E-IRV verifying the days reported by the nonresident as worked outside the city.

As indicated by the guidance above, while employers are required to withhold the earnings tax from all St. Louis employees’ wages, regardless of where their work is performed, nonresident employees are entitled to a refund for work not physically performed within the city, provided their employers sign a completed E-IRV substantiating the nontaxable portion. This was the process followed by the City of St. Louis until 2020 when the COVID-19 emergency declaration forced many St. Louis employees into remote work arrangements.

## The ruling

In tax years 2018 through 2020, Boles and similarly situated plaintiffs, who were St. Louis nonresidents, worked most of their time outside of the city for a St. Louis employer. In conformity with the guidelines previously explained, their employers withheld the earnings tax on 100% of their wages. For tax years 2018 and 2019 the plaintiffs applied for, and received, refunds from the City of St. Louis on those wages attributable to days worked outside the city.

With no change in the law, in 2021 the city refused to issue earnings tax refunds for tax year 2020 to Boles and the other plaintiffs on the argument that “services rendered” under Chapter 5.22 means services provided to a St. Louis employer, or customer and the employer, that received the benefit of the services and was at all times located within the city. The plaintiffs argued that “services rendered” means work physically performed in the city, an interpretation the city itself had adopted until tax year 2020.

The court agreed with the plaintiffs, further noting that the sudden change in interpreting the City Code without formal rulemaking was aligned with the timing of the COVID-19 emergency and likely was driven by concerns over how increasing telework would affect the budget.

## Ernst & Young LLP insights

St. Louis isn't the only jurisdiction coming under fire for imposing taxes on remote workers without regard to their physical work location during the COVID-19 emergency.

For example:

- Ohio litigation is ongoing over municipal taxes imposed by the City of Cincinnati in tax year 2020 on the wages of remote employees based on their principal place of work, despite their employers' requiring them to work outside the city because of the COVID-19 emergency. (See Tax Alert [2022-1044](#).)
- On September 26, 2022, the Cuyahoga County Court of Common Pleas ordered the City of Cleveland to refund 2020 income tax it collected from an individual who worked remotely in Pennsylvania during the COVID-19 emergency. (See *Tax Alert* [2022-1504](#).)
- On June 28, 2021, the US Supreme Court [denied motions](#) to file bills of complaint in a case brought by New Hampshire in October 2020 challenging temporary income tax rules imposed by Massachusetts on the wages of New Hampshire teleworkers during the COVID-19 emergency. Several states joined Massachusetts in this pleading. (See *Tax Alert* [2021-1316](#).) Legislation has since been enacted to prohibit states from imposing their convenience-of-the-employer rule on New Hampshire residents. (See *EY Tax Alert* [2023-0334](#).)

Employers should be aware that several states and localities (e.g., New York State and Philadelphia) permanently impose their taxes based on the location of the employer, without regard to where services are performed (called “convenience of the employer” rule). Thus far, the US Supreme Court has refused to weigh in on the constitutional merits of this taxing regime, leaving the matter for states to address.

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