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Alabama tax court upholds assessment of income tax on remote worker providing services from home office in Idaho

On March 8, 2023, the Alabama Tax Tribunal (court) upheld an Alabama Department of Revenue (Department) assessment of income tax on the wages that a remote worker earned from his Alabama employer while working from his home office in Idaho. ([Mark E. Bollinger v. State of Ala. Dep't of Rev., Inc. 22-390-LP \(Ala. Tax Tribunal, 3/8/23\)](#))

Facts

The employee was directed by his Alabama employer in September 2020 to work remotely from his Alabama apartment during the COVID-19 emergency. He initially determined that he would temporarily work in Idaho while visiting family but later decided to permanently relocate to Idaho, which his supervisor approved. He terminated his Alabama apartment lease, voted in Idaho, but retained his Alabama driver's license through 2021 because it had not expired.

Although his 2020 Alabama Form W-2 reflected all wages paid to him for services provided both within and outside the state, he did not include on his 2020 Alabama personal income tax return the wages earned while working in Idaho. He stated that his employer was unable to provide a corrected Alabama Form W-2 because it "did not have an Idaho business presence."

Ruling

The Department reviewed the employee's 2020 Alabama personal income tax return and other information he provided in support of his position and concluded that by retaining the Alabama driver's license, he "did not abandon his Alabama domicile in 2020 and that, even if he did, the income was taxable as Alabama-sourced income." Accordingly, the Department assessed Alabama income tax on the Alabama-sourced wages earned in Idaho in 2020.

The court upheld the Department's assessment because the employee continued to transact business in Alabama via his employment, and thus, income from his Alabama employer was a result of conducting

business in Alabama and was properly taxable to Alabama.

Alabama's temporary COVID-19 income tax withholding provisions

In May 2020, the Department issued a temporary "operational update due to COVID-19" stating that during the COVID-19 emergency, the state would not impose nonresident income tax or income tax withholding on wages earned by teleworkers working temporarily within the state if the telework was necessitated by the pandemic and related federal or state measures to control its spread.

The guidance did not address income tax withholding requirements for remote work conducted outside of the state during the COVID-19 emergency period except to say that "the wages of Alabama residents are subject to income tax regardless of where they are earned, and income tax withholding applies if the employer has established nexus in Alabama." (See *EY Tax Alert* [2020-1296](#), May 14, 2020.)

Ernst & Young LLP insights

The ruling in this case hinged on the employee's continued connection to his Alabama employer while working remotely from Idaho, disregarding the physical location from where services were performed. Although this interpretation is not expressly set forth in Alabama law or administrative guidance, the result is akin to the "convenience of the employer rule" imposed by several states (e.g., New York) and localities (e.g., Philadelphia). (For the income tax withholding requirements, see Ala. Code § 40-18-70 and [Alabama Rule 810-3-71-.01](#).)

The sudden surge in remote work in connection with the COVID-19 emergency and confusion about how to apply the income tax rules during that period have prompted other rulings like this one, some of them successfully challenged.

For example, Arkansas legislation ([S. 484](#)) overturned a 2020 Department of Finance and Administration (DFA) [legal opinion](#) asserting that despite an employee's physical location within the state of Washington, the employee's work for an Arkansas business met the definition of "carrying on an occupation within the state" thereby subjecting the wages to Arkansas state income tax. (See *EY Tax Alert* [2021-0905](#), May 4, 2021.)

Most recently, the Missouri Circuit Court decided in *Bolves v City of St. Louis* that employees who lived and worked outside of St. Louis were 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. (See *EY Tax Alert* [2023-0351](#), February 23, 2023.)

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