EPSTEIN BECKER GREEN

Employment, Labor & Workforce Management

ACT NOW ADVISORY

State Income Taxation of Mobile Workers

June 28, 2017

By Jeffrey G. Kramer and Susan Gross Sholinsky

With the rise of teleworking and business travel across state lines, it is important for employers to renew their focus on state and local income and payroll tax compliance obligations. The laws vary from state to state. Generally, an employer is required to withhold income tax—and an employee is generally required to pay tax and file a return—in each state where the employee performs services during the course of a year. Many states then provide credits for taxes paid to other states. So, an employee working in a state for even a single day can technically give rise to an income tax withholding and payment obligation in that state.

The issues quickly get much more complicated when one considers the need to allocate bonuses, deferred compensation, commissions, equity, and other forms of compensation among the states where the services were performed. For those employers and employees, the disparate rules among the states impose a staggeringly complex and costly compliance burden, and, in many cases, the amount of money at issue for each employee may be relatively small. These issues are especially relevant nowadays because states have become more active in policing tax compliance for mobile employees, and many states have more tools at their disposal to track employee movement and to audit and assess such taxes.

On several occasions over the past decade, federal legislation was proposed to address this tax issue but failed each time. On June 20, 2017, the U.S. House of Representatives passed H.R. 1393—the Mobile Workforce State Income Tax Simplification Act of 2017 ("Act"). The Act, with certain limited exceptions,[1] generally prohibits the wages or other remuneration earned by an employee who performs employment duties in more than one state from being subject to income tax in any state other than (i) the state of the employee's residence and (ii) any state within which the employee is present and performing employment duties for more than 30 days during the calendar year. The Act exempts employers from state income tax withholding and information reporting requirements for employees not subject to income tax in that state.

So under the Act, for example, a New York employee of a New York company who works in California for 15 days during the course of a year would not be subject to California income tax (under current law, the employee would be subject to California tax). All of the employee's income would be taxable in New York. Similarly, a California employee of a

---

[1] The bill exempts pay earned by public figures, professional athletes, film and other production employees, and professional entertainers.

California company who works in New York for 15 days during the course of a year would not be subject to New York income tax. All of the employee's income would be taxable in California. On the other hand, a New York employee who spends 31 days in both California and North Carolina during a particular year will be subject to income tax in all three states. While we have not seen any studies to indicate which states might be "winners" and "losers" under this Act, one would hope that the Act achieves economic "rough justice" among the states, especially when measured against the extraordinary compliance burden that the law would alleviate.

The Act is now headed to the Senate.

We believe that the Act imposes a much-needed and sensible rule that enables employers and employees to effectively comply with their state income tax filing and payment obligations.

What Employers Should Do Now

- Consider reaching out to your U.S. Senators to express your views on the Act.

- If you have not already done so, review your policies and procedures to ensure compliance with income tax withholding and reporting for

    - teleworking employees and

    - employees who travel from state to state as part of their jobs.

We will advise you about any updates on this proposed legislation.

****

For more information about this Advisory, please contact:

Jeffrey G. Kramer	**Susan Gross Sholinsky**
Newark	New York
973-639-5222	212-351-4789
jkramer@ebglaw.com	sgross@ebglaw.com

This document has been provided for informational purposes only and is not intended and should not be construed to constitute legal advice. Please consult your attorneys in connection with any fact-specific situation under federal law and the applicable state or local laws that may impose additional obligations on you and your company.

About Epstein Becker Green

Epstein Becker & Green, P.C., is a national law firm with a primary focus on health care and life sciences; employment, labor, and workforce management; and litigation and business disputes. Founded in 1973 as an industry-focused firm, Epstein Becker Green has decades of experience serving clients in health care, financial services, retail, hospitality, and technology, among other industries, representing entities from startups to Fortune 100 companies. Operating in offices throughout the U.S. and supporting clients in the U.S. and abroad, the firm's attorneys are committed to uncompromising client service and legal excellence. For more information, visit www.ebglaw.com.

© 2017 Epstein Becker & Green, P.C. Attorney Advertising