

Income/Franchise:

New York ALJ Denies Refund Request for Remote Work Performed Before and During COVID-19 Pandemic

Determination DTA Nos. 830517 and 830681, N.Y. Div. of Tax App., ALJ Div. (11/30/23). In a case involving a nonresident couple claiming a refund of New York State individual income taxes paid on income earned by the husband while he worked remotely in Connecticut for a New York employer before and during the COVID-19 pandemic, an administrative law judge (ALJ) with the New York State Division of Tax Appeals denied the refund claim, holding that – even on the issue of “first impression” as “the facts and effects of the COVID-19 pandemic are unprecedented” – the taxpayer failed to meet his burden that he worked out-of-state due to his employer’s necessity rather than for his own convenience. In doing so, the ALJ explained that while the services he performed required an office, the fact that the taxpayer’s New York campus office was not available due to the COVID-19 pandemic did not result in the determination that the out-of-state services were performed for the employer’s necessity. Additionally, according to the ALJ, the individual did not meet his burden of establishing that the work he performed at his out-of-state home was so specialized that it had to be done away from New York – noting also that the taxpayer’s employer did not provide accommodations for him but instead allowed him to work out-of-state at home rather than as a requirement or out of necessity. Moreover, the ALJ reasoned executive orders “mandating that all employees work from home due to a worldwide pandemic cannot result in special tax benefits to those who do not live in New York, but nonetheless work for, and benefit from, a New York employer.”

URL: <https://www.dta.ny.gov/pdf/determinations/830517.det.pdf>

The ALJ also explained that while not physically present in New York from March 15, 2020 through December 31, 2020, the taxpayer remotely connected to his New York employer and “had a virtual presence in New York when hosting Zoom classes and meetings” – referencing *Wayfair* and commenting that “in this modern economy with its internet technology, one can be present in a state without needing to physically be there.” Lastly, regardless of *Wynne* and *MeadWestvaco*, and the taxpayer’s other arguments, the ALJ rejected the taxpayer’s claim that the New York Division of Taxation’s allocation of all his 2020 income earned from his New York employer to New York violates the Due Process and dormant Commerce Clauses, concluding such allocation was reasonably apportioned and fairly attributable to economic activity within New York. Apparently, the taxpayer has since indicated that he plans to appeal this ruling to the New York State Tax Appeals Tribunal. Please contact us with any questions.

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