

Income/Franchise:

Massachusetts Appellate Tax Board Says Pandemic-Based Telecommuting Rule is Valid and Denies Nonresident's Refund

Case No. C347594, Mass. App. Tax Bd. (7/8/24). In a fairly lengthy opinion, the Massachusetts Appellate Tax Board (ATB) held that pursuant to Massachusetts' COVID-19 pandemic-related telecommuting regulation – which was in effect from March 10, 2020 until September 13, 2021 [see *State Tax Matters*, Issue 2021-10, for more details on this “COVID Regulation”] – Massachusetts validly assessed individual income tax on a nonresident federal government employee for work performed outside of his regular Massachusetts office for those days he worked from home (*i.e.*, in New Hampshire) due to the COVID-19 pandemic for the 2020 tax periods at issue. The individual had challenged application of Massachusetts' “COVID Regulation” to his income for the period from March 16, 2020 through the end of the tax year at issue, contending that the regulation violated the US Constitution's Commerce and Due Process Clauses, and further that his income for that period had no connection to Massachusetts.

URL: <https://www.mass.gov/doc/sakowski-scott-e-v-commissioner-of-revenue-july-8-2024/download>

URL: https://dhub.deloitte.com/Newsletters/Tax/2021/STM/210312_4.html

Denying the taxpayer's underlying refund claim, the ATB concluded that the individual “failed to advance sufficient evidence or convincing arguments that application of the COVID-19 Regulation to the income at issue resulted in improper taxation.” The ATB also explained that the individual “advanced no evidence establishing that any other state had staked claim to his income during his pandemic-related telecommuting,” and that even if another state “laid rightful claim to the same income due to his physical presence in that state while teleworking,” Massachusetts' COVID-19 Regulation offered a credit to “prevent double taxation of the income, thus satisfying Constitutional concerns with fair apportionment.” Under the facts, apart from not appearing at the Massachusetts office, the individual's job duties did not change, and his employer did not adjust his income tax withholdings during the remainder of the 2020 tax year at issue. That is, the individual's employer continued to withhold Massachusetts income tax from his paychecks as if he were working full time (*i.e.*, eight hours per day, five days per week, for a total of forty hours per week) from the Massachusetts office.

Interestingly, the ATB's “Findings of Fact and Report” includes a dissenting opinion. This dissent does not contend that the COVID Regulation violates the US Constitution, but rather essentially posits that its promulgation was beyond the Massachusetts Commissioner of Revenue's statutory authority and that even if it was not, the COVID Regulation did not apply in this case as it only can apply to Massachusetts source income which, the dissent asserts, the nonresident had none. The dissent asserts that as a nonresident, having performed all of his services from outside Massachusetts, he had no Massachusetts source income – which is the factual predicate for invocation of the nonresident income statute. Please contact us with any questions.

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