

Income/Franchise:

New York ALJ Denies Nonresident's Refund Request for Remote Work Performed for Bank During COVID-19 Pandemic

Determination DTA No. 850197, N.Y. Div. of Tax App., ALJ Div. (1/8/25). In a case involving a nonresident claiming a refund of New York State individual income taxes paid on income he earned while working remotely in Pennsylvania during calendar year 2020 for a bank with a New York City office that was exempt from certain COVID-19 pandemic-related restrictions as an “essential business,” an administrative law judge (ALJ) with the New York State Division of Tax Appeals denied the refund claim, holding that 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 noted that the employer, as a financial institution, was under no legal mandate to close its New York City office during the COVID-19 pandemic and there was no evidence to suggest that the nature of the individual’s job changed while he worked in Pennsylvania, only where it was performed.

URL: <https://www.dta.ny.gov/pdf/determinations/850197.det.pdf>

Under the facts, the nonresident’s employer had maintained an office in New York City prior to the pandemic, and the nonresident worked in New York during the beginning of 2020. Commencing on March 16, 2020, the bank employer temporarily closed its New York City office and required the individual to find alternative working arrangements; subsequently, the bank re-opened the New York City office location in September 2021. Under these facts, the ALJ explained that although it may have been necessary for the individual to find alternative working arrangements, “what is lacking is evidence as to why it was necessary” for the bank to close its New York City office. According to the ALJ, when an employer deems telecommuting a necessity under New York’s “convenience of the employer” test, “it means the job cannot be effectively performed from the employer’s New York office due to factors such as specialized equipment needs or the nature of the work itself” – and the record in this case was “utterly silent” as to the bank’s necessity in this matter. Please contact us with any questions.

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