

## Convenience of the Employer Rule

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### Issue

Briefly explain the "convenience of the employer rule" for nonresident income sourcing and how it relates to the COVID-19 pandemic.

### Summary

The “convenience of the employer rule” (i.e., convenience rule) is a rule some states use for sourcing income earned by nonresidents who work for in-state employers at a location outside the state (e.g., from a home office). Under the convenience rule, the sourcing of this income depends on whether the nonresident taxpayer was working remotely for convenience or the employer’s necessity. Five states (Arkansas, Delaware, Nebraska, New York, and Pennsylvania) apply the convenience rule; Connecticut applies it only if the taxpayer’s resident state applies a similar rule for work performed for a Connecticut employer.

The convenience rule also has implications for the income tax credit states allow resident taxpayers to claim for taxes paid to other jurisdictions (i.e., resident credit). Although the resident credit is generally intended to avoid double taxation, differences in the income sourcing rules between states can result in the same income being taxed by two states. This was the case in Connecticut prior to its adoption of a reciprocal convenience rule (2019). Because Connecticut allows a resident credit only for income that it deems taxable by another state under Connecticut’s sourcing rules, it did not allow a credit in pre-2019 tax years for taxes residents paid to other states on income sourced to those states under a convenience rule. Since 2019, however, Connecticut resident taxpayers working for an employer in a state that applies a convenience rule have been able to claim a credit against their Connecticut income taxes for taxes paid to the other state under that rule.

Tax experts have raised the question of whether the days employees work remotely during the pandemic should qualify as convenience days or necessity days in states that apply a convenience rule. New York, for example, has issued guidance indicating that taxpayers should treat these remote days as convenience days, and thus source the income earned for these work-at-home days to New York. To date, Connecticut has not issued guidance on the application of its convenience rule during the pandemic.

Telecommuting during the COVID-19 pandemic also has implications for states that do not impose a convenience rule, since they stand to gain or lose taxable income depending on their other sourcing rules. For example, Massachusetts typically taxes nonresidents only on income they earn while working in the state. During the pandemic, however, it issued a regulation that temporarily taxes income earned by nonresident employees of Massachusetts employers who are telecommuting for pandemic-related reasons.

## **Convenience Rule**

Individual taxpayers are generally subject to tax by their resident state on all their income, regardless of its source. But they may also be subject to tax in nonresident states if they have income that is sourced to those states.

States have different rules for sourcing nonresident taxpayer income. Most states tax nonresidents who work at a location in their state on income they receive for that work. But some states also tax certain income nonresidents earn for work they performed outside of the state. The “convenience of the employer test” (i.e., convenience rule) is used for sourcing the income a nonresident taxpayer earns while working for an in-state employer from a remote location (e.g., their resident state). Under the convenience rule, a nonresident taxpayer’s wage income is sourced to the employee’s physical location if he or she is working remotely by necessity; alternatively, the income is sourced to the employer’s location if the employee is working remotely for his or her convenience.

Five states (Arkansas, Delaware, Nebraska, New York, and Pennsylvania) apply the convenience rule. Connecticut applies the rule only if a nonresident taxpayer’s resident state applies a similar rule. In other words, Connecticut applies the rule to nonresident employees of a Connecticut employer who work from a remote location and reside in one of the five states listed above. Consequently, wages earned by these nonresidents are allocated to Connecticut unless they are working remotely (i.e., in an out-of-state location) due to the necessity of the employer rather than the employee’s convenience ([Connecticut Resident Income Tax Return Instructions](#), 2019 Form CT-1040, p. 5).

## Credit for Income Taxes Paid to Other Jurisdictions

The convenience rule has implications for the income tax credit states allow resident taxpayers to claim for taxes paid to other jurisdictions (i.e., resident credit). The resident credit is generally intended to avoid the risk of double taxation. But states apply different rules for calculating the resident credit, which can result in taxpayers owing income tax to two states on the same income.

In Connecticut, for example, the resident credit is only allowed for income that Connecticut would deem taxable by the other state under Connecticut’s sourcing rules. This means that before Connecticut adopted its reciprocal convenience rule (pre-2019), it did not allow a resident credit for taxes paid to other states on income deemed to be sourced to such states under a convenience rule. Consequently, Connecticut residents who worked for a New York employer and owed taxes to New York for income sourced there under New York’s convenience rule could not claim a resident credit against their Connecticut income taxes for those taxes paid to New York. Since 2019, however, Connecticut has allowed a resident credit for taxes paid on such income ([PA 18-49, § 20](#), and [PA 18-169, § 43](#), codified as [CGS § 12-711\(b\)\(2\)\(C\)](#)).

## Telecommuting During the Pandemic

### *Application of Convenience Rule to Telecommuting During COVID-19*

Tax experts have raised questions about whether the days employees work remotely because of a COVID stay-at-home order should qualify as convenience days or necessity days in states that apply a convenience rule (Noonan, Timothy and Doran J. Gittelman. “[Taxing Times to be a Telecommuter: Convenience Rules During COVID-19](#),” *State Tax Notes*, September 21, 2020). The question comes down to what constitutes necessity for purposes of the convenience rule.

New York is effectively treating these telecommuting days as convenience days, rather than necessity days, for purposes of its convenience rule. Specifically, it issued guidance to taxpayers indicating that “days telecommuting during the pandemic are considered days worked in the state unless [their] employer has established a bona fide employer office at [their] telecommuting location” (New York Department of Taxation and Finance, [Frequently Asked Questions about Filing Requirements, Residency, and Telecommuting for New York State Personal Income Tax](#), accessed January 8, 2021). (Under an exception to New York’s convenience rule, days a nonresident employee works from home are treated as days worked outside the state if the taxpayer’s home office qualifies as a “bona fide employer office” ([New York Tax Treatment of Nonresidents and Part-Year Residents Application of the Convenience of the Employer Test to Telecommuters and Others](#), TSM-M-06(5)I).)

To date, Connecticut's Department of Revenue Services (DRS) has not issued any formal guidance on the application of its reciprocal convenience rule during the pandemic.

### ***Massachusetts' Regulation for Sourcing Nonresident Income during the Pandemic***

Although it does not impose a convenience rule, Massachusetts issued a new regulation requiring nonresidents who worked in Massachusetts prior to the pandemic to treat telecommuting days during the COVID-19 pandemic as days worked from their employer's location for purposes of determining their tax liabilities ([830 Mass. Code Regs. 62.5A.3](#)). Before the pandemic, nonresidents who worked in Massachusetts were taxed on the days they worked in the state and could reduce their income tax liability to reflect any days they spent working from home. The new regulation requires them to treat the at-home days as in-office days if they are working from home due to pandemic-related circumstances (Hamilton, Billy. "Walling In and Walling Out Taxes in New England." *State Tax Notes*, November 2, 2020 (available through the Legislative Library)).

In response, New Hampshire filed a [complaint](#) in the U.S. Supreme Court challenging the constitutionality of Massachusetts' regulation. Connecticut and three other states (New Jersey, Hawaii, and Iowa) have filed an [amicus brief](#) in support of New Hampshire.

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