

## Income/Franchise:

### Massachusetts DOR Adopts Permanent Sourcing Rule on Pandemic-Related Telecommuting

*830 CMR 62.5A.3: Massachusetts Source Income of Non-Residents Telecommuting due to the COVID-19 Pandemic*, Mass. Dept. of Rev. (3/5/21). The Massachusetts Department of Revenue (Department) recently adopted relatively minor changes to its permanent administrative rule on COVID-19 pandemic-related telecommuting and the sourcing of income for residents and nonresidents [see *State Tax Matters*, Issue 2020-49, for more details on the emergency version of this rule]. Similar to the updated emergency version of this administrative rule, the updated permanent rule:

**URL:** <https://www.mass.gov/regulations/830-CMR-625a3-massachusetts-source-income-of-non-residents-telecommuting-due-to-the>

**URL:** [https://newsletters.usdbriefs.com/2020/Tax/STM/201211\\_2.html](https://newsletters.usdbriefs.com/2020/Tax/STM/201211_2.html)

- Sets forth general sourcing rules that apply to income earned by a nonresident employee who telecommutes on behalf of an in-state business from a location outside Massachusetts due to the COVID-19 pandemic – including potentially sourcing such income to Massachusetts, and
- Explains the “parallel treatment” that may be accorded to resident employees with income tax liabilities in other states that have adopted comparable sourcing rules.

The updated permanent rule includes extending its duration through “90 days after the date on which the Governor of the Commonwealth gives notice that the Massachusetts COVID-19 state of emergency is no longer in effect,” rather than through “the earlier of December 31, 2020, or 90 days after the date on which the Governor of the Commonwealth gives notice that the Massachusetts COVID-19 state of emergency is no longer in effect.”

Note that the Department recently issued a working draft directive to “assist individuals who telecommuted in 2020 because of the COVID-19 pandemic with the preparation of their 2020 personal income tax returns” [see *State Tax Matters*, Issue 2021-7, for more details on this draft guidance]. Additionally, note that the New Hampshire Department of Justice has filed a motion for leave to file bill of complaint with the US Supreme Court in an effort to “rectify Massachusetts’ unconstitutional, extraterritorial conduct” with respect to this rule, stating among other claims that the Massachusetts rule “ignores deliberate and unique policy choices that are solely New Hampshire’s to make.” Please contact us with any questions.

**URL:** [https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2021/STM/210219\\_5.html](https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2021/STM/210219_5.html)

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