

Income/Franchise:

New Jersey Division of Taxation Explains Recent Adoption of “Convenience of the Employer” Rule

Convenience of the Employer Sourcing Rule Enacted for Gross Income Tax, N.J. Div. of Tax. (8/11/23). The New Jersey Division of Taxation (Division) issued guidance pertaining to recently enacted New Jersey legislation that adopts a “convenience of the employer” rule for nonresident income sourcing for New Jersey gross (individual) income tax purposes [see A.B. 4694 (2023), and *State Tax Matters*, Issue 2023-30, for more details on these law changes]. The Division explains that this new state law only applies to employees who are residents of states that also impose a similar test, “such as Alabama, Delaware, Nebraska, and New York,” noting that this list may change based on the laws of different states. Additionally, the Division explains that the New Jersey law does *not* apply to Pennsylvania residents who work in New Jersey “since there is a Reciprocal Agreement in place with that state.” Further, according to the Division, New Jersey’s convenience of employer sourcing rule does *not* apply to Connecticut residents who work in New Jersey “based on New Jersey’s understanding that the similar Connecticut convenience rule does not apply to New Jersey residents who work in Connecticut.” The Division also states that it intends to coordinate with the Connecticut Department of Revenue Services and “issue further guidance for clarification.”

URL: <https://www.state.nj.us/treasury/taxation/conveniencerule.shtml>

URL: <https://www.njleg.state.nj.us/bill-search/2022/A4694>

URL: https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2023/STM/230728_4.html

Under New Jersey’s “convenience rule,” the Division explains that a nonresident taxpayer’s employee compensation from a New Jersey employer for the performance of personal services is sourced to the employer’s location (New Jersey) if the employee is working from an out-of-state location (*e.g.*, at home in their resident state) for their own convenience rather than for the necessity of their employer. In determining whether compensation earned by a nonresident telecommuting for a New Jersey employer will be deemed New Jersey sourced income, the Division explains that “New Jersey will apply a similar rule which would be the same as the triggering state’s rule” – for example, “compensation earned by a New York resident telecommuting for a New Jersey employer will be deemed New Jersey sourced income by applying the New York ‘convenience of the employer’ test.”

Lastly, the Division explains that New Jersey’s convenience rule is retroactive to January 1, 2023; accordingly, “affected taxpayers must begin withholdings and/or making estimated payments for tax year 2023 as soon as possible and are required to have proper tax paid by April 15, 2024.” Correspondingly, “employers should consider making adjustments to withholdings as an accommodation to employees, so that they are not underpaid.” The Division also states that it will not impose underlying penalty and interest “as long as the taxpayer begins complying with the new law as of September 15, 2023.”

Check out “New Jersey introduces ‘selective’ convenience of the employer rule,” published by Deloitte Tax LLP’s Global Employer Services team, for additional details on this significant New Jersey law change, and please contact us with any questions.

[URL: https://www.taxathand.com/article/32303/United-States/2023/New-Jersey-introduces-selective-convenience-of-the-employer-rule](https://www.taxathand.com/article/32303/United-States/2023/New-Jersey-introduces-selective-convenience-of-the-employer-rule)

— Norm Lobins (Cleveland)
Managing Director
Deloitte Tax LLP
nlobins@deloitte.com

Kevin Friedhoff (Morristown)
Senior Manager
Deloitte Tax LLP
kfriedhoff@deloitte.com

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