

REMOTE WORKING: TAX FRIEND OR FOE?



COVID-19 has certainly accelerated many shifts for businesses and employees, most notably remote working. Since many employees were forced to work from home due to government mandates or CDC recommendations, employees were able to show that they could work just as effectively as in the office, forcing many employers to reconsider policies and envision a beneficial arrangement for both parties.

While working from home offers numerous benefits for employees, there are municipal tax consequences for employers. Specifically, employers are required to withhold payroll taxes from wages based on *where* an employee is working, which also creates nexus at that location.

Nexus

Nexus defines the level of connection between a taxing jurisdiction, such as a state, and an entity, such as your business. In 2020 and 2021, the Ohio Legislature passed [HB 197](#) and [110](#) to provide relief to businesses on this requirement, allowing employers, for withholding and nexus purposes only, to 'pretend' their workers were still working at their principal place of work. Those legislative fixes ran out at the end of 2021, and it appears unlikely there will be action from the Legislature in 2022.

Remote working has three primary areas that are affected: Payroll withholding, income tax filing requirements and refunds, each outlined below.

Payroll Withholding

Payroll withholding for additional municipalities will be a burden on employers as most of them (and their payroll software/payroll providers) are not equipped to do so. The law requires employers to withhold for an employee who is working from their home at their home municipality if they are working in a different municipality than the office. If an employee is not working fully at home, one best practice is to have the employee indicate what portion of the week will be spent at the home location. Then the payroll system can set up the withholding accordingly, rather than changing the withholding every day.

Income Tax Filing Requirements

Since nexus is established by the mere presence of employees working in their jurisdiction, employers will be required to file income tax returns in those additional municipalities. One way to mitigate the compliance burden is to opt-in for [Ohio Centralized Filing](#). This allows the employer to file one return with the Ohio Department of Taxation and have Ohio allocate the tax among the municipalities. This will enable an employer to file one tax return, make one set of extensions and one set of estimated tax payments each year, rather than filing these items in each municipality. This election must be made by April 15, 2022, through the [Ohio Business Gateway](#) for the 2022 tax year.

Refunds

Employees who had incorrect withholding of their payroll to their primary place of work but have worked from another location may request refunds of the withholding. Aside from the effect this may have on the employee, the employer will be asked to certify information to process the refund request. Fortunately, HB 110 made clear that employers only need to certify the time not working in the primary place of work and that the employer has not asked for a refund from the city on the employee's behalf.

City Incentives

One additional effect on the shift to remote work is its effect on city incentives. If an employer has an incentive with a city, one common requirement is a minimum

number of employees guaranteed to work in the city. That incentive can be in jeopardy due to remote employees not working in the city as promised. It is vital an employer has prompt communication and renegotiation with the city to maintain those benefits.

Contact your [BMF Advisor](#) to discuss how your tax situation may be affected by remote working.