

Planning for State & Local Taxes and the Impact of COVID-19

How the COVID-19 crisis and Shelter-at-Home Orders Affect State and Local Taxes. Tax Considerations on Working Remotely for Individuals and Businesses.

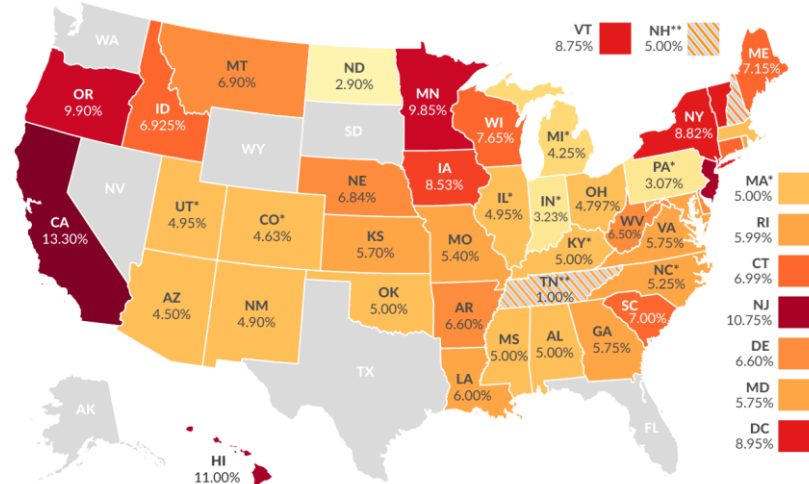
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SALT Issues for Working Remotely

How High are Individual Income Tax Rates in Your State?

Top State Marginal Individual Income Tax Rates, 2020



Note: Map shows top marginal rates; the maximum statutory rate in each state. This map does not show effective marginal tax rates, which would include the effects of phase-outs of various tax preferences. Local income taxes are not included.
 (*) State has a flat income tax.
 (**) State only taxes interest and dividends income.

Sources: Tax Foundation; state tax statutes, forms, and instructions; Bloomberg BNA.

Top State Marginal Individual Income Tax Rates



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State Income Tax – Residents and Nonresidents

- States with an income tax subject residents to tax on all income; nonresidents are taxed on income sourced to that state.
- Nonresidents income sourced to a state include:
 - Compensation paid for work performed in the state
 - Income from real property located within the state
 - Income from partnerships doing business within the state.

Location, Location, Location

- Wages are usually allocated using a fraction of work days in the state divided by total work days.
- Working remotely changes those numbers potentially moving days from the normal office location to a home or other remote location.
- As routines are disrupted weekends and holidays can become work days.

Some States Will Not Assert Tax on Remote Workers

- These states announced guidance for employees working remotely in their state where their normal work location is out of state:
 - GA, MA, NJ, RI & SC.
- CO does not impose income tax on those working in the state on disaster relief.

Except When Location Doesn't Matter

- NY's 'convenience of the employer' test:
 - TSB-M-06(5)I contains a revised rule. The new version no longer relies exclusively on "physical necessity," and creates a narrow exception that will allow nonresident taxpayers who meet certain criteria to work from home without being subject to tax by New York. Under the new rule, a taxpayer whose assigned or primary office (i.e., generally the office out of which the employee is supervised) is in New York, any "**normal work day**" spent at a home office will be treated as a day worked outside the state if the home office qualifies as a "**bona fide employer office.**"

What is a Work Day?

- A **normal work day** means any day that the taxpayer performed the usual duties of his or her job. For this purpose, responding to occasional phone calls or emails, reading professional journals or being *available* if needed does not constitute *performing the usual duties* of his or her job.

What is a Home Office?

- **Primary Factor** - The home office contains or is near specialized facilities.
- **OR** at least 4 of the “secondary factors” **and** 3 of the “other factors” are met.

Home Office – “Secondary Factors”

- The home office is a requirement or condition of employment.
- The employer has a bona fide business purpose for the employee’s home office location.
- The employee performs some of the core duties of his or her employment at the home office.
- The employee meets or deals with clients, patients or customers on a regular and continuous basis at the home office.
- The employer does not provide the employee with designated office space or other regular work accommodations at one of its regular places of business.
- Employer reimbursement of expenses for the home office.

Home Office – “Other Factors”

- The employer maintains a separate telephone line and listing for the home office.
- The employee’s home office address and phone number is listed on the business letterhead and/or business cards of the employer.
- The employee uses a specific area of the home exclusively to conduct the business of the employer that is separate from the living area. The home office will not meet this factor if area is used for both business and personal purposes.
- The employer’s business is selling products at wholesale or retail and the employee keeps an inventory of the products or product samples in the home office for use in the employer’s business.

Home Office – “Other Factors” (continued)

- Business records of the employer are stored at the employee’s home office.
- The home office location has a sign indicating a place of business of the employer. Advertising for the employer shows the employee’s home office as one of the employer’s places of business.
- The home office is covered by a business insurance policy or by a business rider to the employee’s homeowner insurance policy.
- The employee is entitled to and actually claims a deduction for home office expenses for federal income tax purposes.
- The employee is not an officer of the company.

Review Withholding to Account for Changes in Work Location

- In NY the IT-2104 can be filed to change withholding for wages to properly allocate wages to reflect new work locations.

Implications for Statutory Residency

- A person can have only one domicile, but may have multiple residences.
- Someone who maintains a permanent place of abode in NY AND spends all or parts of more than 183 days is a statutory resident subject to NY tax on all of their income.
- Days spent exclusively in interstate or international travel and days of inpatient treatment at a medical facility do not count as NY days.

How do Shelter-at-Home Days Count?

- What about a person who is required to self-isolate or quarantine in NY but not in a medical facility?
- What about someone who stays in NY because a loved one is hospitalized?
- What about someone who either volunteered or was assigned to work in a NY hospital during the crisis—will that count against them in statutory residency audit?



**Considerations for Businesses
with Employees Working
Remotely**

Nexus

- These states announced that they will not assert nexus solely based on a remote worker in the state due to the emergency:
 - DC, GA, IN, IA, MA, MS, NJ, ND, PA, SC.

Withholding

- The following states granted relief for a company's withholding tax obligations:
 - AL, GA, MD, MN, MS, NE, NJ, OH, RI, SC.
- IL (will waive interest and penalties).

Apportionment

- Only the tax departments in Alabama and Georgia have explicitly stated that there will be no change to apportionment formulas due to changes in worker locations for the COVID-19 crisis.
- For other states using three-factor apportionment, the location of salaries would change the payroll factor.
- In addition, calculating the receipts factor could change if the receipts are sourced based upon the cost of performance.

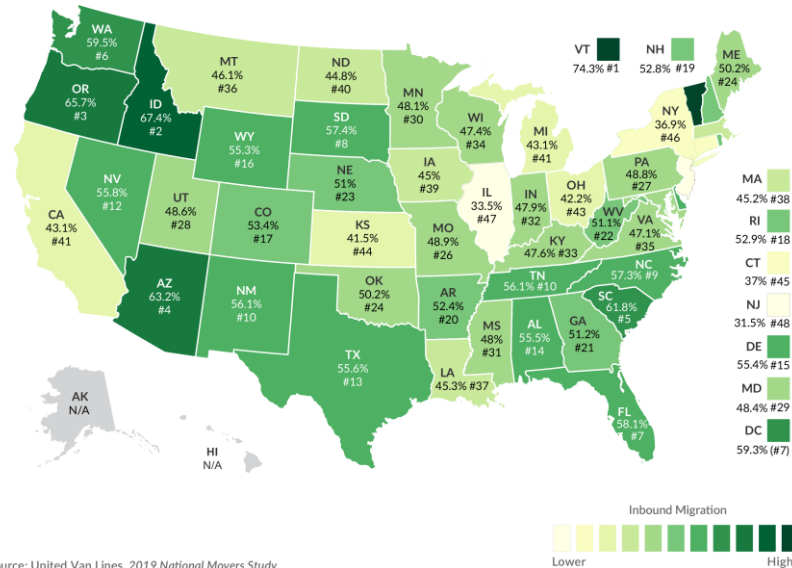


Longer Term Issues

A Mobile Population

Where Did Americans Move in 2019?

Inbound Migration as a Percent of Total Moves, 2019



Source: United Van Lines, 2019 National Movers Study.

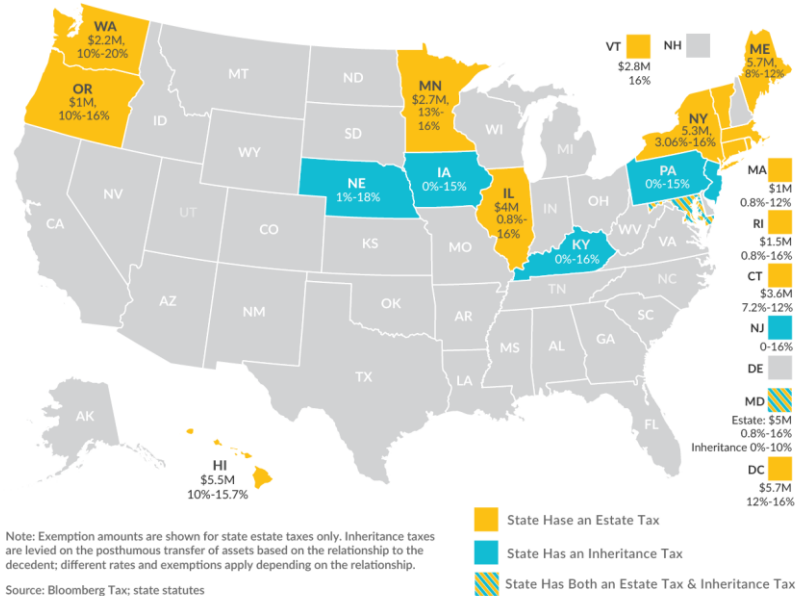
Changing Residency

- Domicile: A person has only one domicile even if they have many residences.
- Statutory Residency: Maintenance of a permanent place of abode & 183-day test.
- What it takes to change residency status.

Estate Planning

Does Your State Have an Estate or Inheritance Tax?

State Estate & Inheritance Tax Rates & Exemptions in 2019



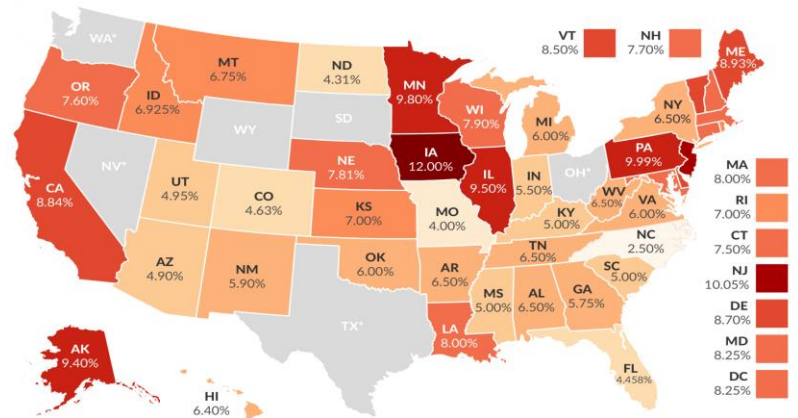
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Relocating a Business

How High are Corporate Income Tax Rates in Your State?

Top Marginal Corporate Income Tax Rates as of January 1, 2020



Note: (*) Nevada, Ohio, Texas, and Washington do not have a corporate income tax but do have a gross receipts tax with rates not strictly comparable to corporate income tax rates. Delaware and Oregon have gross receipts taxes in addition to corporate income taxes, as do several states like Pennsylvania, Virginia, and West Virginia, which permit gross receipts taxes at the local (but not state) level. Florida's corporate income tax rate will return to 5.5% for tax years beginning on or after Jan. 1, 2022. Georgia's corporate income tax rate will revert to 6% on January 1, 2026. The state could see a drop to 5.5% in 2020, pending legislative approval. Illinois' rate includes two separate corporate income taxes, one at a 7% rate and one at a 2.5% rate. Indiana's rate will change to 5.25% on July 1, 2020. The rate is scheduled to decrease to 4.9% by 2022. Mississippi continues to phase out the 3 percent bracket by increasing the exemption by \$1,000 a year. This year, the exemption is \$3,000. By the start of 2022, the 3 percent bracket will be fully eliminated. New Hampshire's rate is 7.9% for tax periods ending before Dec. 31, 2019. In New Jersey, the rates indicated apply to a corporation's entire net income rather than just income over the threshold. A temporary surcharge is in effect, bringing the rate to 10.5 percent for businesses with income over \$1 million. In addition to regular income taxes, many states impose other taxes on corporations such as gross receipts taxes and franchise taxes. Some states also impose an alternative minimum tax and special rates on financial institutions.

Sources: Tax Foundation; state tax statutes, forms, and instructions; Bloomberg Tax



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Questions?

If you have any questions, please enter them into the Questions Box now or email Glenn Newman at newmang@gtlaw.com



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