

John: Hello everyone and welcome to our next episode of *Mobility via Podcast*, a KPMG Tax Radio podcast series covering a range of global mobility topics from remote work to talent management, business strategies, tax matters and mobility technology, just to name a few. I am John Montgomery, a GMS partner at KPMG, and I lead our National Employment Tax practice, and I am based in New York City. I'll be your host for today's episode in which we'll be discussing payroll taxation requirements for states with a "convenience of the employer" regulation as well as pending legislation on convenience rules.

To get started, I wanted to give a little bit of background on convenience rules and what they mean. There are currently five states – Connecticut, Delaware, Nebraska, New York and Pennsylvania – that adhere to the "convenience of the employer" doctrine. There are also a number of localities, which we won't go into today, such as Philadelphia and St. Louis that follow a similar doctrine.

The basic premise of a convenience rule is that if an employee who normally works in an office works from their home in a different state, if the employee is working from home for their own convenience rather than at the behest of the employer, then the doctrine would state that their wages should be sourced and withheld upon as if the employee was physically performing services in that office.

As an example, for a New Jersey resident employee that has an office in New York City, if the employee works in the New York City office for three days a week and then works from home in New Jersey for two days a week, and it is for the employee's convenience and not at the necessity or request of the employer, then the wages related to those two days working from home in New Jersey would be sourced and withheld upon in New York. Obviously these regulations are much more detailed and provide a lot of nuance and clarification and have to be determined based on specific facts of each employer, and unfortunately we will not have time to delve into the weeds on those specifics in this podcast.

In addition, we wanted to highlight a potential new regulation from the state of New Jersey. As a result of the pandemic and the post-pandemic new ways of work, many employees are splitting their time between being in the office and working remotely from home. In states with a convenience rule, those states continue to receive wage sourcing and tax withholding from the employee's pay even though the employee is physically working from their home in another state, similar to the example I provided earlier on a New Jersey resident with a New York City office. This has caused many states to scrutinize this withholding methodology and look for ways to have the tax base remain in their home state.

The governor of New Jersey and the New Jersey Senate have proposed a bill in late 2022 that would create a "convenience of the employer" rule for New Jersey employers who have employees working remotely and residing in a different state, for example, a New Jersey-based employer that has New York residents that work from home. Unlike some of the other states with a convenience doctrine, the New Jersey regulation will only be applicable to employees

who reside in a state that also have a “convenience of the employer” rule which, as mentioned before, is Connecticut, Delaware, New York and Nebraska.

Although Pennsylvania also has this existing rule, Pennsylvania and New Jersey currently have a reciprocal agreement that removes the requirement to withhold on Pennsylvania residents who work in New Jersey. That rule will continue, and Pennsylvania would be exempt from this new regulation. The new regulation as written is set to be effective on January the first of 2023, which as of the date of this podcast has already passed.

We are closely monitoring the legislative process to determine if the regulation passes and, if so, if it is effective retroactively to January first of this year. If it is passed retroactively, employers will have to determine how to adjust employee’s wages back to January first of 2023 in order to be in compliance. Regardless of the timing of the effective date, this new legislation, if passed, will add additional compliance burdens to New Jersey-based employers in order to adhere to the new regulations.

I hope you have found this session informative and helpful in thinking about how you want to proactively address some of these challenges related to remote work and payroll taxation. In future episodes, we’ll continue to address the top-of-mind issues of interest to our listeners. In the meantime, we’d love to hear from you. If you have thoughts on today’s podcast episode or ideas for future episodes, please send us an e-mail at us-taxwatch@kpmg.com. One final thanks to our audience for listening in.