



MULTISTATE INCOME/FRANCHISE TAX

Alabama Tax Tribunal rules that nonresident's income from Alabama company is subject to tax

Tax Alert

Overview

On March 8, 2023, the Alabama Tax Tribunal (“Tribunal”) issued its Final Order in [Bollinger v. State of Alabama Department of Revenue](#). The Tribunal ruled that an Idaho resident who worked remotely for an employer with an Alabama office—where the Idaho resident once worked physically—was liable for tax on income derived from services rendered remotely to that employer.

This Tax Alert summarizes the Tribunal’s decision.

Background

Background facts

During 2020, Taxpayer worked for a company (“Company”) with an office located in Alabama. Taxpayer also lived in Alabama and physically worked at the Company’s Alabama office location.

In September of 2020—after Taxpayer’s job at the company was converted to a remote position—Taxpayer moved to Idaho, where he continued to work for the Company until October of 2021. The Company did not have business operations in Idaho. At the time of trial, Taxpayer still lived in Idaho. Taxpayer voted in the 2020 election in Idaho. However, Taxpayer kept his Alabama driver’s license through 2021.

Alabama Department of Revenue’s income tax assessment

According to the Alabama Department of Revenue (“Department”), Taxpayer’s 2020 Alabama income tax return did not report all the Alabama income from his Form W-2. As a result, the Department made an adjustment to add that income to Taxpayer’s return and issued a final assessment.

Taxpayer’s Appeal to the Tribunal

On appeal, Taxpayer contended that he was not liable for Alabama tax on the income he earned after relocating to Idaho. Conversely, the Department

argued that Taxpayer did not abandon his Alabama domicile in 2020 and that, even if he did, the income was taxable as Alabama-sourced income.

The Tribunal's analysis

Domicile

The Tribunal agreed with Taxpayer by ruling that he abandoned his Alabama domicile in September 2020 and was not subject to tax as a domiciliary of Alabama from that date forward.

Taxability as Alabama-sourced income

According to Ala. Code § 40-18-2 and Ala. Admin. Code r. 810-3-2-.01, income tax is also imposed on nonresident individuals receiving income from property owned or business transacted (including wages for personal services) in Alabama.

The Tribunal reviewed the construction of Ala. Code § 40-18-2 and Ala. Admin. Code r. 810-3-2-.01 *de novo*. Although the former Administrative Law Division of the Department had issued an opinion applying the statute and regulation to facts similar to those of Taxpayer, the Tribunal stated that it was not bound by that decision.

Thus, the Tribunal concluded that “business transacted in Alabama” is synonymous with being “engaged in business” in the state. Despite contrary language in the rule cited above that looked to the location of the employee, the Tribunal ruled that Taxpayer was engaged in business in Alabama because of his “regular and legal employment” with the Company and thus, Taxpayer’s income from the Company was taxable in Alabama despite the employee’s remote location. The Tribunal also noted the following:

- Because of the availability of remote work, Taxpayer’s physical presence in Alabama was not required for him to maintain employment with the Company in Alabama.
- Taxpayer testified that he was able to continue his duties while working remotely and reported to the same Alabama supervisors that managed him while he was working physically in Alabama.

Considerations

Alabama

The Tribunal’s opinion holds that this out of state remote worker’s payroll is Alabama sourced but does not provide specific criteria for employers to analyze when making the sourcing decision. If the Tribunal’s ruling is upheld, Alabama employers with remote employees should consult with their tax advisor to determine if they may have unexpected Alabama withholding obligations. Also, individuals that work remotely for employers with offices in Alabama should consider whether they may be liable for Alabama income tax. Taxpayer had 30 days to appeal the Tribunal’s decision, but it is unknown at this time if an appeal was filed.

Recent developments in other jurisdictions

- For more information on the impact of remote work on state filing obligations in general, please see our previous installment of “Inside Deloitte” (published by *Tax Notes State*), which is available [here](#).
- Various state and local jurisdictions have recently provided guidance on remote work issues, including the following:

- The Utah State Tax Commission [ruled](#) that an individual taxpayer—who taught online courses to students worldwide and previously resided in Utah but moved out of state—was not subject to individual income tax where the taxpayer was not physically working in Utah at any time during the year at issue, was not working for a Utah office of his employer, and the employer had no physical locations in Utah.
- The Louisiana Department of Revenue issued an emergency rule that provides [guidance](#) on a partial, temporary individual income tax exemption attributable to certain remote work performed in Louisiana.
- A Missouri circuit court [ruled](#) that a city earnings tax does not apply to remote work from outside the city.
- The Delaware Division of Revenue provided administrative [guidance](#) on return-to-office policies, telecommuting, and wage income.
- New Hampshire enacted a [law](#) that protects its residents from out-of-state personal income taxation for remote work performed in New Hampshire.
- The City of Philadelphia Department of Revenue provided [guidance](#) addressing P.L. 86-272 and its nexus policy for pandemic-related telecommuting.

Get in touch

[Joe Garrett](#)

[John Paek](#)

[Chris Snider](#)

[Nick Broomhead](#)

[Meredith Harper](#)



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30 Rockefeller Plaza
New York, NY 10112-0015
United States

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