

DELAWARE DIVISION OF REVENUE
TECHNICAL INFORMATION MEMORANDUM 2021-2
March 18, 2021

SUBJECT: TREATMENT OF WAGES FROM REMOTE WORK IN 2020

FOR INFORMATION, CONTACT:

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Delaware has received multiple questions regarding the treatment of wage income generated from employment in Delaware prior to the beginning of the pandemic, but where taxpayers worked from a remote location outside of Delaware as a result of the pandemic. This TIM is issued to provide guidance to taxpayers about how to report days worked from a home located outside of Delaware on 2020 income tax returns.

Delaware law provides that compensation income is sourced to Delaware if it is “for personal services ... a. rendered in this State, or b. attributable to employment in this State and not required to be performed elsewhere.” 30 *Del. C.* § 1124(b).

The Delaware Division of Revenue has long considered work done by employees from their homes to be “attributable” to Delaware employment when the employee is working from home for their own convenience and not because the work is required by the employer to be performed from home. (See Schedule W instructions; *Flynn v. Director of Revenue*, Delaware Tax Appeal Board Dkt. No. 1504 (9/14/2011)).

During the COVID-19 Pandemic, Delaware operated under a state of emergency that commenced on March 12, 2020, that was updated from time to time throughout, and that continues through the date of this TIM. During this time, various limitations were in place in Delaware and many employers directed employees to work remotely from their homes, some of which are located in other states.

Commencing with the Fourth Modification to the State of Emergency, entered on March 22, 2020, through May 31, 2020, broad-based travel limitations and quarantine requirements were in place that caused many employers to require employees to work remotely. Based upon the breadth of the restrictions, taxpayers may treat all days on which they actually worked from a home outside of Delaware during this period as days worked outside of Delaware on Schedule W.

On June 1, 2020, Delaware commenced phase one of the reopening plan, which lifted many of the broad-based limitations. As part of this reopening plan, the State continued to encourage telework to the greatest extent possible. From and after June 1, 2020, taxpayers may report days worked from home as days worked outside of Delaware on Schedule W if the taxpayer’s employer directed the employee to work from home and directed that employees were not permitted to work at the Delaware location

or alternatively if the employer strongly encouraged remote work but required an employee seek advance permission to return in person.

Once individual taxpayers were again permitted discretion to return to offices within Delaware in person, taxpayers may not report days worked from home as days worked outside of Delaware on Schedule W if the employee elected, but was not required, to work remotely.

The Division of Revenue may, in its discretion, require proof of any direction or advance permission given by an employer after June 1, 2020 with respect to remote work.

If you have any questions about this guidance, please contact the Delaware Division of Revenue at the number or email set forth above.

Jennifer R. Noel
Director of Revenue