

The Future of Work PowerPoint

Franchise Tax Board Meeting
Thursday, June 9, 2022

Slide 1: The Future of Work

Presenters' Names: Bill Gardner and Desiree Macedo – Legal Division
June 9, 2022

Slide 2: Roadmap

- Governor's Executive Order
- Employers' Considerations
 - Nexus/Doing Business Requirements
 - Impact on Employer
- Employees' Considerations
 - Residency
 - Sourcing of Income
 - Credits and Deductions

Slide 3: Governor's Executive Order: "Stay at Home Order"

- Altered how businesses conducted their affairs and where their employees worked
 - Telework options for employees
- FTB's response to Governor's Executive Order
 - Released Frequently Asked Questions (FAQs) for tax guidance regarding consequences and compliance

Slide 4: Employers' Considerations – Doing Business

- Employers "doing business" in California will be subject to tax
- The business may employ residents or non-residents of California

Slide 5: Employers' Considerations – PL 86-272

- Federal law which restricts a state from imposing its income tax on some 'person' if their only connection to the state is:
 - the solicitation of orders
 - for sales of tangible personal property,
 - sent outside the state for approval or rejection, and,
 - filled by shipment or delivery from a point outside the state

Slide 6: Employers' Considerations – PL 86-272

- If an employee was teleworking from California:
 - Could alter whether a business was doing business in California

- The employee's activities in the state could impact the business's protections under PL 86-272
- Compensation paid during the Stay at Home order is not considered in determining whether the business was doing business in California
- The presence of an employee teleworking in California due to the Governor's Executive Order is considered as engaging in de minimis activities

Slide 7: Employers' Considerations – Rescission of Stay at Home Order

- Stay at Home Order rescinded on June 15, 2021, FTB updated its FAQs
 - The out of state corporation may meet the definition of "doing business" in California
 - May not be protected by Public Law 86-272, depending on the teleworking activities of the employee

Slide 8: Employers' Considerations – Post Covid-19

- Multistate Tax Commission's (MTC) Statement of Information
 - Listed activities which exceeded the protections of PL 86-272
 - Listed activities which did not exceed the protections of PL 86-272
- FTB issued Technical Advice Memorandum (TAM) 2022-01

Slide 9: Employees' Consideration

- Areas That Impacted Individuals During Covid-19
 - Determining an individual's place of residence during the Stay at Home Order
 - Sourcing of income
 - Areas of relief for individuals who were working and living in multiple jurisdictions during the Stay at Home Order

Slide 10: California Residency Principles

- California's definition of "resident"
- Temporary or transitory
 - Within or without CA

Slide 11: Effects of Covid-19 on Residency

- The residency analysis will remain the same
- Some factors to consider:
 - When the individual entered California
 - Whether the individual remained in California throughout the period of March 19, 2020 through June 15, 2021
 - Whether the individual remained in California after the Governor lifted the Stay at Home Order on June 15, 2021

- Whether the individual provided Covid-19 related services in California
- Whether the individual cared for an at-risk family member or friend

Slide 12: Example – Individual Working Outside California

- Employee A:
 - Is a resident of California
 - Is an employee of Corporation A
- During the Stay at Home Order, Employee A worked remotely at a relative's home outside of California
- Employee A continued to maintain all of her California connections during the period she was outside California

Slide 13: Example – Individual Working Outside California

Response

- Employee A would continue to be a California resident, even if she was temporarily absent from the state.
- Employee A may be able to claim an Other State Tax Credit for taxes paid to the other state.

Slide 14: Sourcing of California Non-Residents

- California non-residents only pay tax on taxable income from a California source
- California sourced income includes:
 - Services performed in California
 - Self employment (independent contractor) income

Slide 15: Example – Individual Working Inside California

- Prior to the Stay at Home Order, Employee B was:
 - A domiciliary of another state
 - A California non-resident
- Employee B was employed inside California during the Stay at Home Order

Slide 16: Example – Individual Working Inside California

Response

- Employee B is presumed to be a California resident
- Employee B may rebut the presumption if he was able to show that he was in California for a temporary or transitory purpose
- Even if Employee B was a California non-resident, he would still have California sourced income

Slide 17: Other State Tax Credit

- Taxpayers may qualify for a credit for income taxes paid to another state if the same income is taxed in California
- In some instances, California may require the individual to claim the credit from the other state

Slide 18: Deductions Available to Employees

- Individuals can still claim job related expenses in California
- Examples:
 - Moving expenses
 - Home Office expenses

Slide 19: Available Resources

- FTB Publication 1031: Guideline for Determining Residency Status
- FTB Publication 1100: Taxation of Nonresidents and Individuals Who Change Residency
- 2021 Instructions for Schedule S: Other State Tax Credit
- 2021 Instructions for Form FTB 3913: Moving Expense Deduction

Slide 20: Summary

- Governor's Executive Order
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 - Nexus/Doing Business Requirements
 - Impact on Employer
- Employees' Considerations
 - Residency
 - Sourcing of Income
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Slide 21: Questions?

Slide 22: Public Comment