Slide 1: The Future of Work
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Slide 2: Roadmap
• Governor’s Executive Order
• Employers’ Considerations
  o Nexus/Doing Business Requirements
  o Impact on Employer
• Employees’ Considerations
  o Residency
  o Sourcing of Income
  o Credits and Deductions

Slide 3: Governor’s Executive Order: “Stay at Home Order”
• Altered how businesses conducted their affairs and where their employees worked
  o Telework options for employees
• FTB’s response to Governor’s Executive Order
  o 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:
  o the solicitation of orders
  o for sales of tangible personal property,
  o sent outside the state for approval or rejection, and,
  o 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:
  o Could alter whether a business was doing business in California
o The employee’s activities in the state could impact the business’s protections under PL 86-272
o Compensation paid during the Stay at Home order is not considered in determining whether the business was doing business in California
o 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• Stay at Home Order rescinded on June 15, 2021, FTB updated its FAQs
  o The out of state corporation may meet the definition of “doing business” in California
  o 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
  o Listed activities which exceeded the protections of PL 86-272
  o 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
  o Determining an individual’s place of residence during the Stay at Home Order
  o Sourcing of income
  o 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
  o Within or without CA

Slide 11: Effects of Covid-19 on Residency
• The residency analysis will remain the same
• Some factors to consider:
  o When the individual entered California
  o Whether the individual remained in California throughout the period of March 19, 2020 through June 15, 2021
  o 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
- Employers’ Considerations
  - Nexus/Doing Business Requirements
  - Impact on Employer
- Employees’ Considerations
  - Residency
  - Sourcing of Income
  - Credits and Deductions

Slide 21: Questions?

Slide 22: Public Comment