



Rhode Island Department of Revenue

Division of Taxation

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TAX ADMINISTRATION

ADVISORY FOR TAX PROFESSIONALS
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Division addresses questions involving nexus and apportionment

Guidance is in response to inquiries involving temporary remote work amid pandemic

PROVIDENCE, R.I. – The Rhode Island Division of Taxation is aware of the new pressures on the business community and others in responding to the coronavirus (COVID-19) pandemic. The Division is committed to providing as much certainty as possible to taxpayers and tax professionals.

A number of employers have asked employees to work remotely (i.e., telecommute, or telework) from their homes temporarily amid the pandemic. In response to some related inquiries that the Division has received involving potential nexus and apportionment issues, the Division provides the following information.

RHODE ISLAND SALES AND USE TAX: NEXUS

For the duration of Rhode Island's coronavirus state of emergency, the Rhode Island Division of Taxation will not seek to establish nexus for Rhode Island sales and use tax purposes solely because an employee is temporarily working from home during the state of emergency, or because an employee is temporarily working from home during the state of emergency and is using property to allow the employee to work from home (e.g., computers, computer equipment, or similar property) temporarily during the state of emergency.¹

Put another way, the presence of one or more employees that previously worked in another state but, solely due to the state of emergency, are working remotely from Rhode Island, will not in and of itself trigger nexus for Rhode Island sales and use tax purposes. Property that is temporarily located in Rhode Island during the state of emergency solely to allow one or more employees to work from home temporarily in Rhode Island (e.g., computers, computer equipment, or similar property) during the state of emergency will not in and of itself trigger nexus for Rhode Island sales and use tax purposes.

This policy is predicated on the condition that there are no other personnel, or any properties or activities, of a remote retailer within Rhode Island that would constitute sufficient physical presence, either before or during the state of emergency, to establish nexus for Rhode Island sales and use tax purposes. This policy is further predicated on the condition that an out-of-state retailer does not have sufficient sales into Rhode Island, either in the number of transactions or in the amount of gross receipts, during the calendar year that would warrant a finding of nexus for Rhode Island sales and use tax purposes.²

¹ See Rhode Island Governor Gina M. Raimondo's Executive Order 20-02, issued March 9, 2020, and related supplements.

² See, among other things, Rhode Island Division of Taxation Regulation 280-RICR-20-70-45 ("Out of State Retailers – Registration").

RHODE ISLAND CORPORATE INCOME TAX: NEXUS

For the duration of Rhode Island's coronavirus state of emergency, the Rhode Island Division of Taxation will not seek to establish nexus for Rhode Island corporate income tax purposes solely because an employee is temporarily working from home during the state of emergency, or because an employee is temporarily working from home during the state of emergency and is using property to allow the employee to work from home (e.g., computers, computer equipment, or similar property) temporarily during the state of emergency.³

Put another way, the presence of one or more employees that previously worked in another state but, solely due to the state of emergency, are working remotely from Rhode Island, will not in and of itself trigger nexus for Rhode Island corporate income tax purposes. Property that is temporarily located in Rhode Island during the state of emergency solely to allow one or more employees to work from home temporarily in Rhode Island (e.g., computers, computer equipment, or similar property) during the state of emergency will not in and of itself trigger nexus for Rhode Island corporate income tax purposes.

In addition, the performance of any services by such employees within Rhode Island will not, of itself, cause their employer to lose the protection of Public Law 86-272.⁴ This policy is predicated on the condition that there are no other activities being conducted within Rhode Island on behalf such out-of-state corporate employers, either before or during Rhode Island's coronavirus state of emergency, that would establish nexus with Rhode Island for corporate income tax purposes.⁵

Latest updates

For the latest information about Rhode Island state taxes amid the coronavirus pandemic, see the Division of Taxation's coronavirus webpage: <http://www.tax.ri.gov/COVID/>.

RHODE ISLAND TAXATION: APPORTIONMENT

If a business derives income from sources within and outside of Rhode Island, its net income must be apportioned by various formulas depending on the nature of the business and the structure of the entity. In general, some entities must use an apportionment method involving a single factor: sales. Others must use an apportionment formula involving three factors: property, sales, and payroll.

For the duration of Rhode Island's coronavirus state of emergency, services performed by one or more employees, who previously worked in another state but, solely due to the pandemic, are now working remotely from Rhode Island, will not be considered by the Rhode Island Division of Taxation to increase the numerator of their employer's payroll factor for purposes of apportioning income.

³ Rhode Island's corporate income tax is also known as the business corporation tax (see Rhode Island General Laws Chapter 44-11).

⁴ United States Public Law 86-272, codified at 15 U.S. Code § 381 *et seq.*

⁵ See, among other things, Rhode Island Division of Taxation Regulation 280-RICR-20-25-8 ("Nexus").

This policy is predicated on the condition that the presence of such employees in Rhode Island will be temporary and that they will return to a regular workstation located outside of Rhode Island after the coronavirus state of emergency has ended.

Note: In general, which apportionment formula an entity uses depends upon how the business is treated for federal income tax purposes.⁶ Following is a plain-language summary:

- Formerly, most multistate corporations made the determination by using a three-factor apportionment formula that took into account sales, payroll, and property. For tax years beginning on or after January 1, 2015, the apportionment formula that multi-state corporations must use to measure the share of business conducted in Rhode Island consists of only one factor: sales (also known as total receipts or gross receipts). This is widely known as single-sales-factor apportionment, and it applies to all entities treated as C corporations for federal tax purposes, including stand-alone C corporations and those that are part of a combined group under mandatory unitary combined reporting.
- Taxpayers treated as passthrough entities for federal income tax purposes continue to use three-factor apportionment.

Taxpayers with questions about the guidance summarized in this Advisory may contact the Division's Tax Assessment and Review section at (401) 574-8935 from 8:30 a.m. to 3:30 p.m. business days, or email: Tax.Corporate@tax.ri.gov.

The Rhode Island Division of Taxation, part of the Rhode Island Department of Revenue, has normal operating hours from 8:30 a.m. to 3:30 p.m. business days. For more information, contact the Division of Taxation at (401) 574-8829 or see <http://www.tax.ri.gov/contact>

⁶ For more information, see Division of Taxation Regulation 280-RICR-20-25-9 ("Apportionment of Net Income").