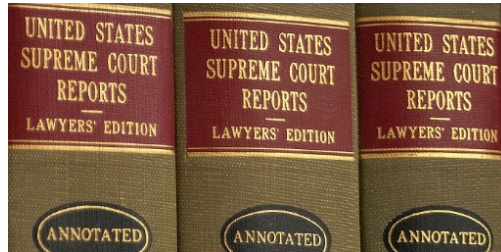




SUFFOLK ACADEMY OF LAW
The Educational Arm of the Suffolk County Bar Association
560 Wheeler Road, Hauppauge, NY 11788
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HOW TO RUN & GROW YOUR LAW FIRM

The “Silent Partner”

FACULTY

Lance Rothenberg, J.D., LL.M
Susan Manns-Bates

Moderators

Karen Tenenbaum, Esq. and Jay Sheryll, Esq.

February 11, 2021
Suffolk County Bar Association, New York

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Those are the four keys found in any successful business. If you're ready to take your service-based business to the next level, then it's time to partner with Susan Manns-Bates, visionary entrepreneur and owner of Clients ARM.



Leverage Susan Manns-Bates' Experience

Susan has more than 30 years of director-level experience and is ready to partner with you to scale your business to new heights. Business thrives when owners focus on the needs, wants, and desires of customers. Old fashioned customer principles with excellent remote administrative services is the core of Clients ARM's success.

Susan has 32 years of corporate credit experience. She can help you implement the right credit policies to protect the bottom line of your business. As an expert in both first and third party collections, Susan and her team can effectively collect on past due accounts while securing business-client relationships important to successful business.

Solo attorneys and law firms of any size can leverage Susan's 15 years of experience in legal account management for cost-effective administrative solutions. Susan has experience in client account management, client intake, retention, advanced deposits, collections, and billing.

Stop worrying about whether the changes in coding will cause you to be flagged for a federal audit. Susan has more than 10 years of experience working in coding and billing. You can get help with your coding, billing, customer service, and electronic claims filing needs.



Lance Rothenberg, J.D., LL.M., is a tax consultant with CohnReznick, LLP (New Jersey/New York) focusing on state and federal tax controversies and disputes as well as multi-state tax planning issues. Lance has broad experience assisting a wide-range of businesses and business owners, from Fortune 100 companies and high net-worth individuals to small and mid-size businesses, facing a variety of federal, state, local, and multi-state tax issues, including sales and use taxes, personal income taxes and residency, payroll taxes, corporate income and franchise taxes, and excise taxes.

Prior to joining CohnReznick, Lance gained significant tax experience working at prominent, international law firms in both Washington, DC and New York, NY. Lance represents clients facing federal and state audits before the IRS and state/city tax departments, with residency audits, with voluntary disclosure matters, with sales/use tax audits, in collection proceedings, and when necessary, he assists with appeals before administrative tribunals. He frequently helps clients with obtaining advisory opinions and letter rulings, in addressing multi-state nexus issues, with tax clearance issues, with bulk sale issues, with responsible person trust fund assessments, and with responding to routine audit notices. He has significant experience defending New York residency audits, and has broad experience advising clients on sales and use tax matters, including *Wayfair* nexus and marketplace provider issues.

Lance is a frequent author and lecturer on a variety of state and local tax topics. He genuinely enjoys working with his clients and helping solve their tax problems.

He can be reached at lance.rothenberg@cohnreznick.com or 862.245.5059.

Find him on LinkedIn at: <https://www.linkedin.com/in/lancerothenberg/>



Attorneys A.R.M.

Back Office Services for Attorneys

Susan Manns
Executive
Director of
Attorneys ARM
LLC. Presents:

The “Silent Managing
Partner”, Back office
services.



“The Beginning of your Firms Success”
Reception, Intake, Retaining, Client Services.

The Client Relationship begins with: Reception, Intake, Retaining Process!

“You had me at Hello, The art of answering a law firm phone.

The importance of the Clients first impression and setting a consultation.

How to set up a lasting relationships with your Client during a consultation.

How to set your Client up for billing and collections success during the retaining process.

The necessity of a proper Fee agreement and the “Welcome Client” transition process.

Client Management, is not for the faint of heart.

The End Reward, efficient Client Management: Billing & Collections Process



Evergreen Deposits are a daily commitment to your revenue success.

The 3 C's to effective Collections, Consistent Communication, Client Management, Collection Calls.

Never apologize to a Client and why.

Explaining a clients work in phases promotes good results.

Asking for money does not mean you don't care about the Client.

How to achieve a 5-star review and collect your money.

Just say no to payment plans, the time to manage eats up your billable time.

Clients ARM LLC and 3rd party collections

Billing Clients your visual pathway to their case success.

Editing your prebills without writing off your time.

Never let your client force you into crediting your time.

Statements should be a pathway for continued services, never your revenue.

Net 30 terms is not for Law Firms and why.

Your statement is a marketing tool.

Your billing software must be Law firm friendly.

Client Trust Ledger		Bank Statement		Reconciled	
Retainer	\$1,000	Deposit	\$1,000	X	
Fees Earned	-\$500	Check #101	-\$500	X	
Expenses	-\$100	Check #102	-\$75	X	
		Check #103	-\$25	X	
Return to Client	-\$400	Check #104	-\$400	X	

IOLTA Trust Accounting the 3-way reconciliation.

What is a 3- way IOLTA trust reconciliation and how to stay compliant.

Daily reconciling is the only way to freedom from an audit.

Law Firm Trust Accounting does not fall under the heading for all Accountants.

Trust Accounting Software importance and pitfalls for proper record keeping.

Bank, Accounting Program & Case Management 3-way Reconciliation hints.



“The Silent Managing Partner” Back Office Services

1. Separating Back office services from Legal Services a must for proper law firm boundaries.
2. Using remote back office services is required in the 21st century.
3. What Software do I choose for Reception, Intake, Billing & Collections, Case Management, Accounting including trust accounting.
4. How do you choose back office services.
5. How can Attorneys ARM LLC help your firm.



“The Silent
Managing
Partner”
Back Office
Services

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1st party back office services.

www.Attorneysarm.com

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NY Residency & CV19 Telework Taxation

Suffolk County Bar Association

Tax Law Committee

Thursday, February 11, 2021

Presented by:

Lance E. Rothenberg, JD, LLM

CohnReznick LLP

State & Local Taxation & Controversy

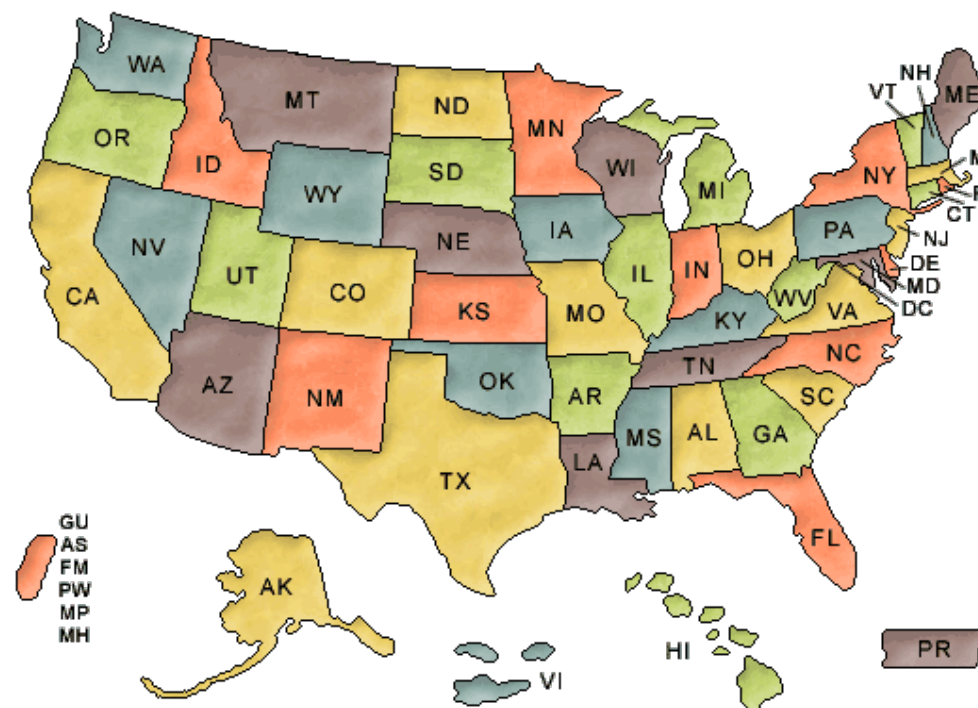
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Webinar Agenda

- COVID-19 Taxation & WFH Telework Nexus Update
- Residency Update
- Audit & Enforcement Update



COVID19 Telework Taxation Update

COVID19 Telework and Tax Migration

“Obnoxious New Yorkers who fled to suburbs are driving neighbors nuts”
--NY Post (02.04.21)

Nissan's 'office pod' imagines a new kind of remote working (re new concept camper)
--CNN (02.05.21)



“Work Remotely for Up to 2 Years in the Cayman Islands With Their New WFH Program” --Travel & Leisure (02.06.21)

“Newly Remote Workers Will Bring New State and Local Tax Obligations”
--Bloomberg Tax (12.22.20)

“Working from home is a hit: Most WFH Americans want to keep teleworking after COVID-19”
--Chicago Tribune (12.14.20)

“Bankers and Wall Street executives are fleeing New York and moving to Florida in droves as the pandemic makes remote work look more permanent” --Business Insider (12.24.20)

“1 in 4 Americans will be working remotely in 2021, Upwork survey reveals” --CNBC (12.15.20)

Nexus – An Overview

- Before a state can tax an out-of-state business, that business must first have “nexus” with the taxing state.
- Nexus refers to the nature and frequency of contacts that an out-of-state business must establish in a state before the state may subject that business to taxation.
- Telecommuting employees can create nexus on behalf of a foreign corporation for income tax purposes. See, e.g., *Telebright Corp. v. Director*, 38 A.3d 604 (NJ Sup. Ct., App. Div.) (2012).

Nexus
= Minimum Contacts

Due Process Clause
= Minimum Connection

Commerce Clause
= Substantial Presence

WFH - Physical Presence Nexus Considerations

- With employees no longer working at their assigned office locations, businesses should evaluate their new footprint.
- Are employees working across state lines beyond the company's pre-pandemic boundaries?
- If so, businesses should consider whether the presence of those employees could trigger physical presence nexus in new jurisdictions potentially creating a host of costly new tax compliance obligations and inequities.
- **Consequences:** Payroll Taxes, Corporate Income Taxes, Personal Income Taxes, Sales/Use Taxes, Excise Taxes; Miscellaneous Taxes??

"About a third of Americans are working from home because of the coronavirus."
--NPR (05/08/2020)

"Up to half of American workers are currently working from home, more than double the fraction who worked from home (at least occasionally) in 2017-18."
--Brookings (04/06/2020)

WFH - Payroll Tax Considerations

- Employers typically withhold income taxes based upon the location where an employee works, which may be different from the location where the employee resides.
- New York employer would typically withhold New York taxes for employees working from its New York office.
- This is true whether the employee resides in New York, New Jersey, Connecticut, or Pennsylvania.
- Under pandemic-related disruptions, many employees may now be working from their home state or perhaps from an altogether new state
- Registration? Reciprocal Agreements?

“Twitter tells employees they can work from home ‘forever’.”
--CNBC (05/12/2020)

“Big Tech was first to send workers home. Now it’s in no rush to bring them back.”
--Washington Post (05/18/2020)

“Facebook Tells Employees To Work From Home Up Until Summer 2021.”
--Forbes (08/07/2020)

WFH - Corporate Income Tax Considerations

- Is a business “doing business” in a new state(s) for corporate income/franchise tax purposes?
- If so, it should consider the impact upon its multistate apportionment.
- Absent special relief, for states that utilize payroll and property factors, the presence of employees or company property in a new jurisdiction may impact the apportionment formula.
- Consider whether a company’s sourcing of receipts may be impacted. In states that utilize cost of performance sourcing for sales revenue, a shift in workforce location could potentially affect the location where services are performed.
- Impact upon PL 86-272 protections?
- Impact upon credit/incentive packages?

“Amid pandemic, returning to offices remains an open question for tech leaders.”

--Techcrunch (08/03/2020)

“The work-from-home tax crisis we have to see coming.”

--Accounting Today (08/05/2020)

WFH - Sales/Use Tax Considerations

- Under *Wayfair*, in 2018 the U.S. Supreme Court abrogated the physical presence requirement and ushered in economic nexus.
- Consequently, many “remote sellers” of taxable goods and services subject to each state’s Wayfair provisions, which include small seller threshold exceptions.
 - In most states, a remote seller does not have economic nexus with a market state unless it exceeds greater than \$100,000 or 200 transactions in that state.
- But, if a remote seller could be treated as having nexus in a new state due to the presence of a telecommuting employee, then it would likely meet the **physical presence** standard and may no longer qualify as a remote seller.
- Consequently, seller might find itself subject to sales tax collection obligations

“More BigLaw firms close or require remote work because of coronavirus threat.”

--ABA Journal (03/16/2020)

“This Big Law Firm Has Permanent Plans for Remote Working.”

--Bloomberg Law (07/16/2020)

“Four-Fifths of CEOs Expect COVID-19 to Entrench Remote Working.”

--New York Times (08/10/2020)

WFH - Personal Income Tax Considerations

- Individuals performing services in a state typically owe income tax on sourced income
- “Convenience of the Employer” rules recast days spent working from home for convenience as opposed to necessity
- New York City offices reopened on Monday, June 22. If employees stay home for health concerns or child care or employer policy, are those days subject to convenience?
- Tax Migration & Residency Changes
- Nonresident Filings & Allocation
- Credit for Taxes Paid

“Google to Keep Employees Home Until Summer 2021 Amid Coronavirus Pandemic.”
--WSJ (07/27/2020)

“From stay-at-home dealmaking to virtual internships, here's how Wall Street is transforming.”
--Business Insider (06/04/2020)

Telework - State Guidance

- **Guidance is State-by-State**
- Many states (and some cities) have issued guidance considering some of these nexus issues and granting varying degrees of relief.
- Many states have not
- Businesses should:
 - Track the location of their workforce
 - Evaluate whether the states where their workforce is now situated have issued guidance
 - Consider the scope of relief granted, if any
 - Consider the timeframe for when the relief expires
- With budgetary constraints, minor foot-faults exceeding the scope of relief granted may be viewed negatively by a state tax auditor.
- Possible Federal legislation ??

New Jersey = broad nexus relief granted

New York = FAQ reasserts “convenience rule”

Connecticut = no guidance issued

Pennsylvania = broad nexus relief granted

Border Battle: New Hampshire vs. Massachusetts

New Hampshire v. Massachusetts

- Petition filed with U.S. Supreme Court (10.19.2020)
 - *“Massachusetts has launched a direct attack on a defining feature of the State of New Hampshire’s sovereignty. For decades, New Hampshire has made the deliberate policy choice to reject a broad-based personal earned income tax or a general sales tax.”*
 - *“In the middle of a global pandemic, Massachusetts has taken deliberate aim at the New Hampshire Advantage by purporting to impose Massachusetts income tax on New Hampshire residents for income earned while working within New Hampshire”*

Amicus Brief (12.21.2020)

- Filed by: Ohio, Arkansas, Indiana, Kentucky, Louisiana, Missouri, Nebraska, Oklahoma, Texas, And Utah
- In Support of New Hampshire’s right to have the case heard

Amicus Brief (12.22.2020)

- Filed by: New Jersey, Connecticut, Hawaii, and Iowa
- In Support of New Hampshire on the merits

Border Battle: New Hampshire vs. Massachusetts

Excerpts from New Jersey's and Connecticut's Brief for New Hampshire (*i.e.*, against New York):

- *“The question presented in this case is of nationwide and pressing importance. In addition to Massachusetts, five other States reach beyond their borders to directly tax out-of-state residents for the income they earn working remotely from their States of residence (“Home States”).”*
- *“Not only does the issue directly impact so many States, but it is of staggering consequence to their fiscal well-being.”*
- *“Whether Massachusetts or other States can levy taxes directly on the income of nonresidents working from home affects billions of dollars in state tax revenue that amici States would otherwise receive.”*
- *“When a State unconstitutionally taxes nonresidents working from home, it forces amici States to choose between losing billions of dollars of revenue by allowing credits to offset such taxes, or double taxing their residents.”*

NY's FAQ re Residency & Telecommuting
(10.19.20)

- Convenience Rule
- TSB-M-06(05)I

“COVID-19 and the ‘Great
Lockdown’ Telework Multistate Tax
Considerations.”
--CPA Journal (07/2020)

Residency Update and Issues

COVID19 Impacts upon Residency

“NYC relocations accelerating at ‘substantial’ pace, local movers say.”
--FOX Business (08/07/2020)

“COVID-19 Pandemic Pushes Many In New York City To Suburbs.”
--NPR (07/04/2020)

“39% of younger millennials say the Covid-19 recession has them moving back home.”
--CNBC (08/05/2020)

Is leaving New York really that easy??

“A Run on the Catskills.”
--New York Times (06/17/2020)

“If Remote Work Is Our New Reality, Is Boston Still Worth The Trouble?.”
--WBUR (07/07/2020)

“When the Pandemic Sent You Back to Childhood.”
--Bloomberg City Lab (06/12/2020)

“Thousands Of New Yorkers At Risk Of Eviction As Cuomo's Moratorium Expires
--Gothamist (08/05/2020)

Two Tests for Residency

Domicile

- True home
- Leave and land
- Can only have one domicile at a time
- Five primary factors
- More than just changing a driver license!

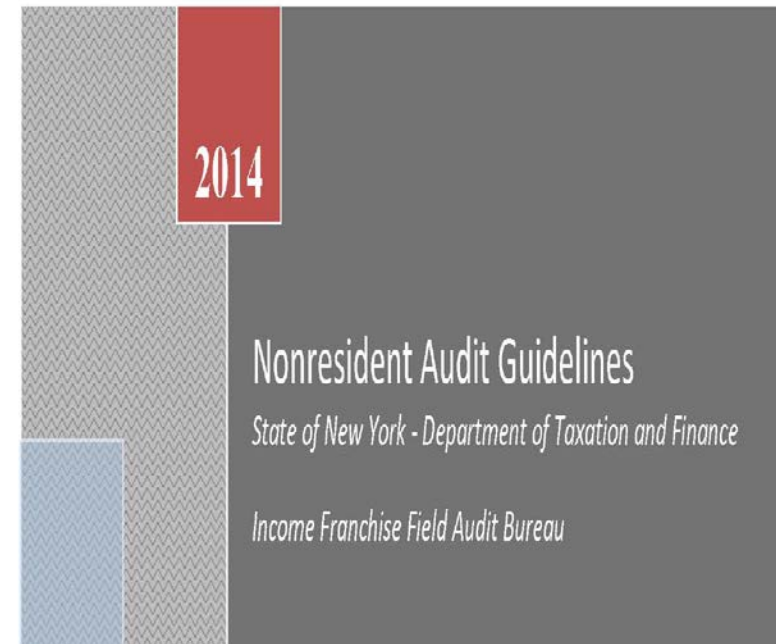
Statutory Residency

- Alternative test
- Maintain a permanent place of abode
 - Residential interest
 - Unfettered access
- Greater than 183 days in the jurisdiction

Residency Audits

- Difficult and intrusive
- Very fact-intensive
- Detailed review of voluminous records
- To determine intentions, whereabouts, and movements

“NY, I Can't Seem To Quit You (As My Tax Domicile).”
--Law360 (03/26/2018)



- Department of Taxation & Finance publishes detailed audit guidelines
- “Manual” for auditors and taxpayers
- Last updated 2014

Domicile Test

- True, fixed, permanent home
- The place you return to after having been absent
- Requires both a subjective intention and physical presence
- Once established, a domicile continues until the taxpayer can demonstrate:
 - abandoned former domicile; and
 - established new domicile
- Evidence must be clear and convincing.
- Burden of proof rests with the party asserting the change.

Matter of Newcomb, 192 NY 238 (1908):

“Residence means living in a particular locality, but domicile means living in that locality with intent to make it a fixed and permanent home. Residence simply requires bodily presence as an inhabitant in a given place, while domicile requires bodily presence in that place and also an intention to make it one’s domicile.”

Domicile Test

- Changing domicile is not as easy as relocating from Manhattan home to Connecticut lake house to telecommute during pandemic
- New York aggressively audits claims of domicile change
- Successful change of domicile requires intention to relocate permanently proven by objective evidence
- Can “quarantine” in new location be sufficient?
- Some business owners plan to relocate away from NYC
- Workers fleeing urban centers and relocating far afield...have they changed their residency?
- *Individual moves to Cayman Islands under Global Citizen Concierge Program for up to two years with remote work in NYC. Has he changed his residency?*

Five Factors

1. Time
2. Homes
3. Business Activities
4. Near & Dear Items
5. Family
-
6. Secondary Factors

In re Bostwick, DTA No. 820637 (ALJ 04/12/2007) (“Wealth permits individuals to live in a manner that is unlike the average person....”)

Statutory Residency Test

Permanent Place of Abode

- Does the dwelling exhibit physical characteristics for year-round habitation?
- Does the taxpayer have a legal right to occupy the dwelling?
- If the taxpayer does not, does she nevertheless have access to and use of the dwelling?
- If she has a legal right, has she exercised that right by enjoying her residential interest in it?
- Maintained for substantially all of year?

Day Count

- A “day” in New York: a minute is a day
- Exceptions:
 - Travel Days
 - Medical Days (admitted in patient)
- Burden of Proof: the importance of record keeping
- Many taxpayer only count overnights or only count days spent at PPA
- No exceptions for shopping or dining out

Gaied v. New York State Tax Appeals Tribunal, 22 N.Y.3d 592 (N.Y. 2014)
(must have a “residential interest” in the abode).

Recent Litigation

In re Nelson Obus, DTA No. 827736 (ALJ 08/22/2019); *aff'd* (TAT 01/25/2021)

- Whether taxpayer maintained permanent place of abode in New York?
- New Jersey resident who worked in New York City and maintained a vacation home in upstate New York (Adirondacks)
- Satisfied the > 183 days test and determined that vacation property satisfied permanent place of abode test
- Vacation property located more than 200 miles from his New York City office
- Use limited to no more than two to three weeks solely for vacation
- Nevertheless, ALJ concluded that taxpayer purchased property for his use and maintained the property for his use and therefore qualified as residence

“New York Hits Out-of-Stater With Hefty Tax Bill Over Vacation Home.”
--WSJ (09/07/2019)

In re Barker, DTA No. 822324 (Tax App. Trib., 06/23/2011) (concluding Hamptons vacation property qualified as permanent place of abode)

Recent Litigation

In re Russekoff, DTA No. 827740 (ALJ, 12/19/2019)

- Connecticut domiciled resident who worked in New York City and who maintained vacation property on Shelter Island in New York
- Satisfied the > 183 days test and was determined to be New York statutory resident for 2010 – 2013 and paid tax to New York on all income including capital gains from sales of securities
- Taxpayer claimed resident credit against New York tax for taxes paid to Connecticut on capital gains (intangible income)
- Court denied credit concluding intangible income was not sourced anywhere and therefore properly subject to tax by New York leading to double taxation of investment income

In re Biggar, DTA No. 827817 (Tax App. Trib., 12/24/2019)

- Whether individual (New Zealand native) was a domiciliary of New Zealand or New York for 2014
- Taxpayer's mother died in New Zealand in 2014, and he returned home to spend time with family and purchased a home near his father in New Zealand
- Domicile not dependent upon citizenship
- Individual can have only one domicile at a time
- Presumption against domicile change from one nation to another is generally greater than from one state to another
- Domicile established by physical presence and intention, and is a question of fact
- Weighing all the facts, Tribunal concluded taxpayer did not establish by clear and convincing evidence that he gave up his New York domicile

WFH - Nonresident Allocation

- Nonresidents owe income tax on sourced income
- New York domiciled resident quarantines in New Jersey with family
 - New Jersey has issued temporary nexus relief covering payroll tax withholding and personal income tax sourcing
 - When does New Jersey's relief end? What happens then?
 - Convenience rule?
- New York resident typically works in New Jersey
 - Quarantines at home in New York and telecommutes
 - Plans to telecommute indefinitely in future
 - Should he ask his employer to change his payroll withholdings?
- Due to Pandemic, taxpayer retires in 2020, and moves to Florida in 2021. He'll be paid severance in 2021. Unless qualified retirement payment (e.g., annuity), severance is allocated to New York.

"Should N.J. start a border war and grab income taxes paid by NYC employees now working at home in Jersey?."

--NJ.com (08/02/2020)

"NY and its neighbors need a tri-state coronavirus tax compact: With increased telecommuting, taxation for suburbanites could get complicated, so states should work together."

--City & State New York (06/04/2020)

WFH - Resident Credit For Taxes Paid

- Individuals typically can claim a credit in their home state for taxes paid to another state
- Dual residency scenarios
- Claiming a revised credit after a residency audit
- Not a perfect solution preventing “double” taxation
- Quarantine in state with no income tax? No credit. (New Hampshire, Florida, Texas, Wyoming)

“COVID May Have Canceled College, But Zoom University Is Still In Session.”
--Forbes (08/03/2020)

“The virus beat us': Colleges are increasingly going online for fall 2020 semester as COVID-19 cases rise.”
--USA Today (07/29/2020)

WFH - New Hires

- New hires and interns, from out-of-state, would typically work at employer's location in Manhattan
- Due to pandemic, new hires may be unwilling or unable to relocate to Manhattan
- Employers should evaluate whether the new hire working in a different state will create nexus and whether that is beneficial with respect to other tax planning objectives
- Employer may need to register, file, and remit taxes

"Coronavirus is upending summer internships — how to make your mark if your internship is now virtual."

--MarketWatch (04/27/2020)

"This is what internships look like in a remote world."

--CNN (07/16/2020)

WFH - Permanent Telework?

- Telework may bring permanent disruption to the workforce
- Many employers and employees will continue to telework well into the future
- Business and individuals will need to understand the consequence of operating in a multi-jurisdictional environment that were not contemplated prior to March 2020
- State temporary nexus guidance will eventually lapse, with teleworkers creating nexus in new jurisdictional footprints

“What will be the new normal for offices?”: ‘Millions of workers are toiling at home because of the pandemic. Many of them may never go back into the office.’
--The Economist (05/09/2020)

“Fight Over Income Tax Nexus Brewing in the States.”
--Tax Analysts (08/11/2020)

Audit & Enforcement Update

COVID-19's Impact on Audits & Enforcement

- Revising State Tax Revenue Estimates Downward
 - New York State facing projected \$13 billion shortfall
 - New Jersey facing projected \$10 billion shortfall
- Monitor legislation flirting with new taxes
 - Potential to raise top income tax rates
 - Potential to suspend deductions
 - Potential to enact new base-broadening taxes

“De Blasio and Council, Facing Fiscal Crisis Over Virus, Agree on Budget With Big Cuts.” --NYT (06/29/2020)

“Retail Chains Abandon Manhattan: ‘It’s Unsustainable.’”
--NYT (08/11/2020)

“New York and New Jersey Consider Financial Transaction Taxes.”
--Tax Foundation (07/23/2020)

“Ocasio-Cortez Pushes Cuomo to Back Billionaires’ Tax.”
--NYT (07/16/2020)

COVID-19's Impact on Audits & Enforcement

- Short term

- Slow down of audits/enforcement
- Suspension of field audits
- Increase of desk audits
- Email exchange in place of sit down meetings
- Negotiations via telephone rather than in person
- Decreased reliance on observation tests and increased use of other indirect audit methodologies
- Opportunities to settle?
- Longer wait times for call center

“States Are in a Quandary as Taxes Evaporate and Virus Spending Soars.”
--NYT (04/15/2020)

“State Forecasts Indicate \$121 Billion 2-Year Tax Revenue Losses Compared to FY 2019.”
--Tax Foundation (07/15/2020)

- Long term

- Look for ramp up of audit activity, in particular of high dollar value items
- Expect more aggressive audit positions, as states seek more audit dollars to close budget gaps

COVID-19's Impact on Audits & Enforcement

- Appeals
 - BCMS currently scheduling “telephonic” hearings
 - Presentation of defenses by telephone
- Voluntary Disclosure Program
 - With increased enforcement looming, look for opportunities to resolve
- Maintain good recordkeeping
 - Amidst pandemic chaos, maintain good records!
- Maintain open communication with Tax Authorities
- File returns even if lacking funds to pay

“States Face Deficits From Virus Revenue Loss.”

--WSJ (05/20/2020)

“As Lawyers Adapt to 'NY on PAUSE', State Court System Expands Virtual Operations.”

-- New York Law Journal (03/31/2020)

Questions

???

DISCLAIMER :

This is merely an outline for informational purposes.

It cannot be relied upon for actual tax advice.

Please consult your tax advisor or
feel free to give me a call.

Thank You

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