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280-RICR-20-55-14

TITLE 280 – DEPARTMENT OF REVENUE

CHAPTER 20 – DIVISION OF TAXATION

SUBCHAPTER 55 – PERSONAL INCOME TAX

PART 14 - Withholding for Employees Working Remotely During the COVID-19 State of Emergency

14.1 Purpose

The purpose of these rules and regulations is to provide guidance to employers who have implemented remote working requirements for their employees, some of whom are performing services on behalf of their employer from a location outside the state where their employees were based prior to the COVID-19 State of Emergency.

14.2 Authority

These rules and regulations are promulgated pursuant to R.I. Gen. Laws § 44-1-4, § 44-30-95 and § 44-30-71, which specifically authorizes the Tax Administrator to prescribe regulations for determining the amount of income taxes to be withheld from wages. These rules and regulations have been prepared in accordance with the requirements of R.I. Gen. Laws § 42-35-2.10 of the Rhode Island Administrative Procedures Act.

14.3 Application

These rules and regulations shall be liberally construed so as to permit the Tax Division the authority to effectuate the purpose of R.I. Gen. Laws Title 44-30 and other applicable state laws and regulations. These rules and regulations apply to employers whose employees would otherwise be subject to Rhode Island withholding and are temporarily performing their work functions outside of Rhode Island solely because of the ongoing COVID-19 State of Emergency. These rules and regulations also apply to employers whose employees would otherwise not be subject to Rhode Island withholding and are temporarily performing their work functions within Rhode Island solely because of the ongoing COVID-19 State of Emergency.

14.4 Severability

If any provision of these rules and regulations, or the application thereof to any person or circumstances, is held invalid by a court of competent jurisdiction, the

validity of the remainder of the rules and regulations shall not be impaired or affected thereby.

14.5 Definitions.

A. "COVID-19" means the disease caused by the novel coronavirus SARS-CoV-2.

B. "COVID-19 State of Emergency" means the state of emergency declared by the Governor of Rhode Island in response to the 2019 novel coronavirus disease pandemic.

C. "Nonresident individual", as defined in R.I. Gen. Laws § 44-30-5(b), means an individual who does not meet the definition of "resident individual."

D. "Outside of Rhode Island" means any other state but Rhode Island within the geographical limits of the United States of America.

E. "Resident individual", as defined in R.I. Gen. Laws § 44-30-5(a), means an individual who is domiciled in Rhode Island or an individual who is not domiciled in Rhode Island but maintains a permanent place of abode in Rhode Island and is present in this state for an aggregate of more than one hundred eighty three (183) days of the taxable year, unless the individual is in the Armed Forces of the United States.

14.6 Non-Resident Individuals Employed by a Rhode Island Employer but Temporarily Remotely Working Outside of Rhode Island

A. The State of Rhode Island will continue to treat as Rhode Island-source income the income of employees who are non-resident individuals temporarily working outside of Rhode Island solely due to the COVID-19 State of Emergency. The Division of Taxation reserves the right to review the facts and circumstances of individual cases and make any appropriate determinations in accordance with Rhode Island law.

B. Example: A resident individual from State A works for a Rhode Island employer, normally performs his or her tasks within Rhode Island, and has wages that are subject to Rhode Island income tax withholding. If the employee is temporarily working within State A solely due to the COVID-19 State of Emergency, the employer should continue to withhold Rhode Island income tax since the employee's work is derived from or connected to a Rhode Island source.

14.7 Resident Individuals Employed by an Employer Outside of Rhode Island but Temporarily Remotely Working in Rhode Island

A. The State of Rhode Island will not require employers located outside of Rhode Island to withhold Rhode Island income taxes from the wages of employees who are resident individuals who are temporarily working within Rhode Island solely due to the COVID-19 State of Emergency.

B. Example: A Rhode Island resident individual works for an employer in State B, normally performs his or her tasks within State B, and has wages that are subject to State B income tax withholding. If the employee is temporarily working within Rhode Island solely due to the COVID-19 State of Emergency, the employer will not be required by Rhode Island to withhold Rhode Island income taxes from that employee's wages for the duration of the emergency.

14.8 Limited Duration of These Rules

A. These rules and regulations shall be in effect for 120 days, or up to 180 days if extended, unless one of the following occurs:

1. The COVID-19 State of Emergency in Rhode Island has ended; or

2. Permanent rules and regulations are promulgated pursuant to R.I. Gen. Laws §§ 42-35-2.6 through 42-35-2.9; or

3. The Tax Administrator enters into a withholding agreement with any other state(s) pursuant to R.I. Gen. Laws § 44-30-72 that would then govern the withholding of income taxes between Rhode Island and the other signatory state(s).

14.9 Limited Applicability of These Rules

A. These rules and regulations:

1. Apply to employers whose employees are temporarily performing remote work outside of Rhode Island solely because of the ongoing COVID-19 State of Emergency.

2. Shall not apply to employers outside of Rhode Island who, prior to March 9, 2020, were withholding Rhode Island taxes from the wages of their employees working remotely in Rhode Island.

3. Shall not apply to employers in Rhode Island who, prior to March 9, 2020, were withholding another state's taxes from the wages of employees working remotely in that other state.

4. Do not apply in situations where the employer and its employees, albeit working remotely, are situated in the same state. In that event, Rhode Island personal income tax requirements, as set forth in statutes and regulations, still apply.

5. Apply to wages earned on or after March 9, 2020 until one of the relevant conditions set forth in Section 14.9 above is satisfied as it relates to the employer.

6. Do not apply to payments required to be made under the Rhode Island Employment Security Act (Titles 28-42, 28-43, and 28-44 of the General Laws), the Rhode Island Temporary Disability Insurance Act (Titles 28-39 and 28-40 of the General Laws), or the Job Development Assessment (Section 28-43-8.5).

14.10 Reconciliation with Sourcing Rules in Other States

Other states have adopted and may adopt sourcing rules that subject an employee who is a Rhode Island resident and is suddenly working within Rhode Island due to the COVID-19 State of Emergency to still incur an income tax liability in another state pursuant to that state's sourcing rules. That employee will be eligible for credit for taxes paid to that other state under R.I. Gen. Laws § 44-30-18. Furthermore, the employer of such an employee is not obligated to withhold Rhode Island income tax to the extent the employer remains required to withhold income tax with respect to the employee in such other state.

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