



Massachusetts
Taxpayers Foundation

August, 27, 2020

Ms. Rebecca Forter, Esq.
Rulings and Regulations Bureau
Massachusetts Department of Revenue
100 Cambridge Street
Boston, MA 02108

RE: 830 CMR 62.5A.3

Dear Attorney Forter:

I write to express my support for the recently proposed regulation (830 CMR 62.5A.3) entitled **Massachusetts Source Income of Non-Residents Telecommuting due to the COVID-19 Pandemic**.

Massachusetts Taxpayers Foundation (MTF) is a non-profit, non-partisan research organization that provides public and private sector decision makers with accurate, timely, unbiased research and constructive solutions that drive public policy in order to strengthen the State's finances and position the Commonwealth for long-term growth. Our vision is a Commonwealth with economic opportunity for all. As an organization focused on the fiscal health of Massachusetts, we pay close attention to tax policy and its impact on the taxpayers of Massachusetts.

MTF also focuses on economic issues and we have been closely following the impacts and disruptions to regular business practices that the COVID-19 pandemic has prompted. Among the many changes is the sudden migration to remote working by many employees who worked in-person in Massachusetts prior to the pandemic. While this practice has allowed many employees to retain employment and remain productive, it also raises tax issues about where to source employee income. Therefore, we appreciate the clear guidance that this regulation provides with respect to the sourcing rules for non-residents of Massachusetts that were working here prior to the pandemic and no longer are due to pandemic-induced circumstances.

It is my understanding that the intent of the emergency regulation, this proposed regulation and the related Technical Information Release is to maintain the tax treatment of income received by employees who previously worked in Massachusetts, but due to pandemic-caused circumstances now work elsewhere, until 90 days from when the emergency order is lifted or

December 31, 2020, whichever occurs earlier. As you are aware, the emergency regulation expires 90 days from its effective date, or mid-October in this instance. By promulgating the proposed regulation at this time, DOR is ensuring this guidance remains in effect without a lapse thereby providing MA employers with the certainty they need and enabling them to keep payroll processes, sales tax collection obligations and corporate nexus considerations unchanged.

Massachusetts joins all of the other New England states that impose an income tax in providing a credit to residents of their state for taxes paid elsewhere on that income so that taxpayers with tax obligations in more than one state can avoid double taxation. Because New Hampshire does not have an income tax, it does not have such a credit, however, NH residents who are employed by a MA employer but now working remotely maintain the same tax obligation as they had prior to the pandemic. Given the unprecedented circumstances this pandemic has caused, we think that is a fair outcome in the short-term. Longer term, MTF supports a regulatory framework that recognizes the mobility of the modern workforce, provides consistent rules and sets forth some type of safe harbor for occasional telecommuting.

In closing, let me take this opportunity to thank you for listening to our concerns about TIR 20-5, an earlier version of guidance that had the effective date coinciding with the emergency order. By extending it for a reasonable period thereafter in TIR 20-10 and this regulation, you allow employers and employees time to make the necessary changes.

I appreciate the opportunity to offer comments and look forward to working with you on issues of mutual interest.

Sincerely,

Eileen McAnneny

Eileen McAnneny
President