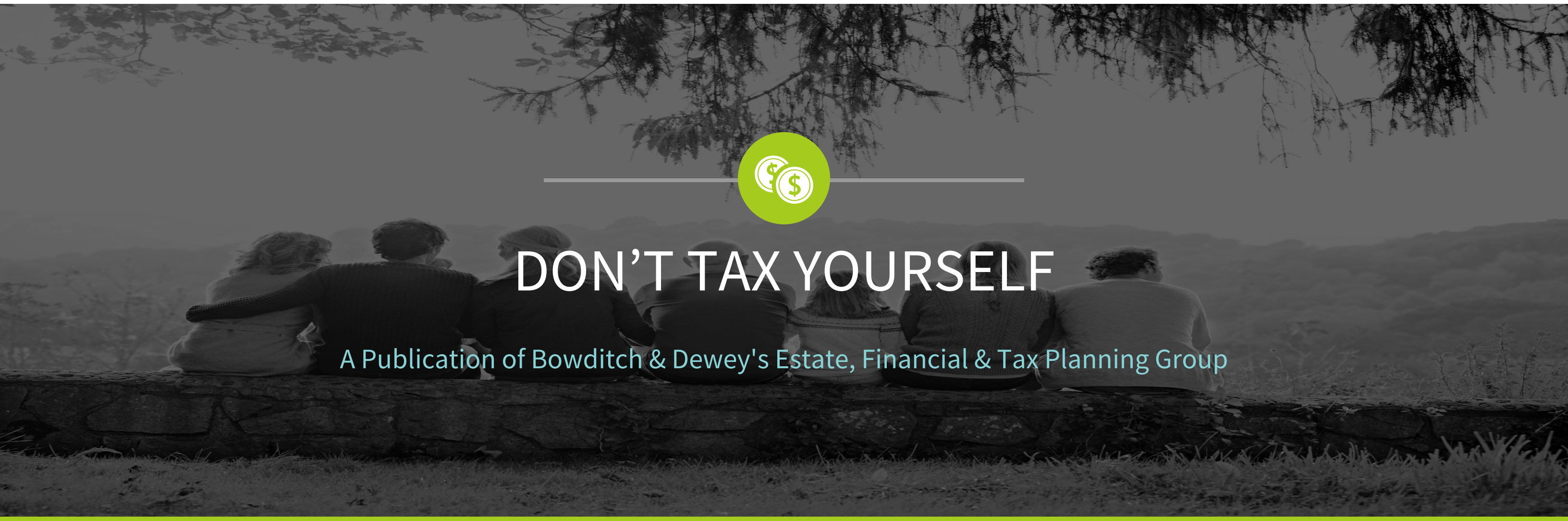

Remote Work Tax and Compliance Considerations

BY BOWDITCH & DEWEY • JANUARY 27, 2022

Many tax and compliance obligations apply when a company offers a remote work arrangement to employees in different states.

STATE AND LOCAL EMPLOYEE TAX REQUIREMENTS

First, the company must work with its payroll provider to withhold payroll and income taxes in states where it hires remote employees. If an employee works part-time in one state and part-time in another state, the employee payroll and income tax withholding is even more complicated. For example, if an employee is a resident of a state with a high income tax rate and commutes on a part-time basis to a state with a lower tax rate, the employer first must pro-rate income taxes based on the number of days the employee spends in each state. Then, for the days the employee spends in his resident tax jurisdiction, the employer might have to withhold in addition the difference between the resident tax rate and the lower state tax rate multiplied by the income initially pro-rated to the non-resident state. In other words, the resident tax rate, if higher than the non-resident tax rate, applies to all the income of the employee.

STATE AND LOCAL FAMILY MEDICAL LEAVE TAX REQUIREMENTS

Many states, including Massachusetts, have recently enacted family medical leave benefits to be paid for by taxes on employee wages. A company must consider the application of these benefits (and associated taxes) to remote or hybrid employees. For example, if a company employee resides in New Hampshire but works even on a part-time basis in Massachusetts, the employee will be eligible for the Massachusetts paid family medical leave benefits. The employer must then also withhold the Massachusetts family medical leave taxes from this employee's wages.

STATE INCOME TAXES

A company must file a non-resident income tax return in a particular state if it is considered to have "nexus" with the state. Courts have held that having an employee live and work in a state is sufficient to create nexus for income tax purposes. Most states will apportion income for tax purposes to a state based on certain apportionment factors: typically, the percentage of payroll, property, and sales in the state over total enterprise payroll, property and sales. If a company generates no other sales and has no other tangible property in the state where it hires an employee to work remotely, a negligible percentage of its income will be allocated to the state with the remote employee. A tax return filing, however, will likely be required.

COMPLIANCE OBLIGATIONS

Different state labor laws (minimum wage, break, etc.) and workers compensation insurance laws also apply to employees residing in different states. A state may also require a company to register with its department of state if the company has employees residing and working in the state.

States adopted these different laws governing employment and taxes well before technological advances allowed people to work together for one employer across the globe. We are happy to help you implement a practical and cost-effective plan to maintain compliance with the different state and local legal and tax requirements for a remote workforce.