

Convenience of the Employer Rule

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May 2, 2025 | 2025-R-0067

Issue

What is the convenience of the employer rule (i.e. convenience rule) and how does it apply in Connecticut? What is the status of (1) New Hampshire's legal challenge to Massachusetts' temporary convenience rule and (2) New Jersey's income tax credit for taxpayers who successfully challenge another state's convenience rule?

Summary

Most states that impose an income tax require nonresidents who work there to source their wage income to the state based on the number of days they worked there. Some states, however, use a convenience rule to source nonresident wage income. Under the convenience rule, the income from days the nonresident taxpayer was working from a location outside the state (e.g., in their home state) is sourced based on whether he or she was working remotely for convenience or the employer's necessity. At least seven states (Alabama, Connecticut, Delaware, Nebraska, New Jersey, New York, and Pennsylvania) apply the convenience rule. Connecticut and New Jersey apply a reciprocal convenience rule, meaning that it applies only if the taxpayer's resident state applies a similar rule ("The Convenience of the Employer Rule: A Taxing Issue for Remote Workers – Part II," *State Tax Notes*, November 8, 2024).

During the COVID-19 pandemic, Massachusetts imposed a temporary convenience rule in the form of a regulation that required nonresidents who worked in Massachusetts before the pandemic to treat telecommuting days during the pandemic as days worked from their employer's location for purposes of determining their tax liabilities ([830 Mass. Code Regs. 62.5A.3](#)). In October 2020, New Hampshire filed a [motion](#) with the U.S. Supreme Court challenging the constitutionality of Massachusetts' regulation. (Connecticut and three other states filed an [amicus brief](#) in support of

New Hampshire.) The Supreme Court ultimately denied New Hampshire's motion in June 2021 and did not explain its decision not to take up the case.

In 2023, New Jersey enacted an [income tax credit](#) designed to encourage resident taxpayers to challenge another state's convenience rule. Specifically, it allows a refundable income tax credit equal to 50% of the tax owed to New Jersey for residents who worked remotely for an out-of-state company between 2020 and 2023 and were denied a refund from that state. In order to claim the credit, a taxpayer must file and win an appeal with the other state's tax court and obtain a refund from that state.

According to New Jersey's Division of Taxation, one taxpayer has used the program to date and received a refundable credit of \$7,797 for the 2020 tax year. The division had no additional data on pending cases and possible credits that may be requested in the future. For additional information, the division describes the credit in detail on its [website](#). A 2024 *State Tax Notes* article also discusses the credit and the various steps taxpayers need to take to receive it (Noonan and Banks, "[New Jersey vs. New York: Litigation Efforts on the Convenience Rule](#)," April 8, 2024).

Convenience Rule

Individual taxpayers are generally subject to tax by their resident state on all their income, regardless of its source. But they may also be subject to tax in nonresident states if they have income that is sourced to those states.

States have different rules for sourcing nonresident taxpayer income. Most states tax nonresidents who work at a location in their state on income they receive for that work. But some states also tax certain income nonresidents earn for work they performed outside of the state. The "convenience of the employer test" (i.e. convenience rule) is used for sourcing the income a nonresident taxpayer earns while working for an in-state employer from a remote location (e.g., their resident state). Under the convenience rule, a nonresident taxpayer's wage income is sourced to the employee's physical location if he or she is working remotely for the company's necessity; alternatively, the income is sourced to the employer's location if the employee is working remotely for his or her convenience.

Connecticut applies the rule only if a nonresident taxpayer's state of residence applies a similar rule. In other words, Connecticut applies the rule to nonresident employees of a Connecticut employer who work from an out-of-state location and reside in a state that also imposes a convenience rule (e.g., New York). Wages earned by these nonresidents are sourced to Connecticut

unless they are working remotely (i.e. in an out-of-state location) due to the necessity of the employer.

The convenience rule has implications for the income tax credit states allow resident taxpayers to claim for income tax they paid to other jurisdictions (i.e. resident credit). The resident credit is generally intended to avoid the risk of double taxation. But states apply different rules for calculating the resident credit, which can result in taxpayers owing income tax to two states on the same income.

In Connecticut, for example, the resident credit is only allowed for taxes paid on income that Connecticut would deem taxable by the other state under Connecticut's sourcing rules. This means that before Connecticut adopted its reciprocal convenience rule (pre-2019), it did not allow a resident credit for taxes paid to other states on income sourced to such states under a convenience rule. Consequently, Connecticut residents who worked for a New York employer and owed taxes to New York for income sourced there under New York's convenience rule could not claim a resident credit against their Connecticut income taxes for those taxes paid to New York. Since 2019, however, Connecticut has allowed a resident credit for taxes paid on such income ([PA 18-49](#), § 20, and [PA 18-169](#), § 43, codified as [CGS § 12-711\(b\)\(2\)\(C\)](#)).

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