

New York Convenience of Employer Rule

Under New York’s “convenience of the employer rule”, the employer is required to withhold New York state income tax from all wages paid to the employee if the reason the employee is working from home outside of the state is for the employee’s own convenience. (TSB-M-06(5)I).

Based on New York guidance, non-resident employees whose assigned or primary offices (e.g. the office from which they are supervised) are in New York, any “normal work day” spent at a home office will be treated as a day worked outside New York if the respective taxpayer’s home office qualifies as a “bona fide employer office.” Otherwise, such day would be considered as a New York day, and subject to state withholding.

In satisfying the exception to the convenience of employer rule, a taxpayer must establish that their home office constitutes a “bona fide employer office.” State guidance sets forth a series of factors that are considered in determining whether a taxpayer’s home office fulfills the exception requirement. The factors are divided into three categories: (1) the primary factor, (2) the secondary factors, and (3) other factors.

Taxpayer’s home office will be considered to satisfy a bona fide employer office if it meets either:

the primary factor, or
at least 4 of the 6 secondary factors AND 3 out of the 10 of the other factors.

Primary Factor

The home office contains or is near specialized facilities. If the employee’s duties require the use of special facilities that cannot be made available at the employer’s place of business, but those facilities are available at or near the employee’s home, then the home office will meet this factor. For example, if the employee’s duties require the use of a test track to test new cars, and a test track is not available at the employer’s offices in New York City, but is available near the employee’s home, then the home office will meet this factor. In the alternative, if the employee’s duties require the use of specialized scientific equipment that is set up at the employee’s home (or at a facility near the employee’s home) but could physically be set up at the employer’s place of business located in New York, then the home office would not meet this factor.

Secondary Factors

ONE

The home office is a requirement or condition of employment. If the employer requires the employee to work from his or her home office as a condition of employment, the home office will meet this factor. For example, if a written employment contract states the employee must work from home to perform specific duties for the employer, then the home office will meet this factor.



TWO

The employer has a bona fide business purpose for the employee's home office location. If the employer has a bona fide business purpose for establishing an office in the locale where the employee's home is located, the home office will meet this factor. For example, if the employee is an engineer working on several projects in his or her home state and it is necessary that the employee have an office near these projects in order to meet project deadlines, then the home office will meet this factor.

THREE

The employee performs some of the core duties of his or her employment at the home office. If some of the core duties of employment are performed at the home office, then the home office will meet this factor. For example, the core duties of a stock broker include the purchase and sale of stock. Accordingly, if the stock broker executes stock purchases and sales from the home office, this would constitute performing some of the core duties at the home office. However, if the stock broker merely reads business publications on the weekend, this would not constitute performing any core duties at the home office.

FOUR

The employee meets or deals with clients, patients or customers on a regular and continuous basis at the home office. If an important part of the employee's duties include physically meeting with clients, patients or customers in the normal course of the employer's trade or business, and those meetings are performed on a regular and continuous basis at the home office, then the home office will meet this factor. For example, the employer has clients located near the employee's home office and the employee must meet with the clients once a week to perform the duties of his or her job. If the meetings with clients are on a regular and continuous basis at the employee's home office, then the home office will meet this factor.

FIVE






The employer does not provide the employee with designated office space or other regular work accommodations at one of its regular places of business. If the employer does not provide the employee with designated office space or other regular work accommodations at one of its regular places of business, then the home office will meet this factor. For example, an employer wishes to reduce the size of the office space maintained in New York to decrease rental expenses and, therefore, no longer provides designated office space or other regular work accommodations for one of its employees. Instead, the employer allows the employee to work from the employee's home. If the employee must come to the office, the employee must use the "visitors" cubicle, conference room, or other available space that is also used by the other employees of the company. In this instance, the home office will meet this factor.

SIX

Employer reimbursement of expenses for the home office. If the employer reimburses the employee for substantially all of the expenses (e.g., utility expenses, insurance) related to the home office, or the employer pays the employee a fair rental value for the home office space used and the employer furnishes or reimburses the employee for substantially all of the supplies and equipment used by the employee, then the home office will meet this factor. For purposes of this factor, substantially all of the expenses means 80% or more of the expenses.



Other Factors

	The employer maintains a separate telephone line and listing for the home office.
	The employee's home office address and phone number is listed on the business letterhead and/or business cards of the employer.
	The employee uses a specific area of the home exclusively to conduct the business of the employer that is separate from the living area. The home office will not meet this factor if the area is used for both business and personal purposes.
	The employer's business is selling products at wholesale or retail and the employee keeps an inventory of the products or product samples in the home office for use in the employer's business.
	Business records of the employer are stored at the employee's home office.
	The home office location has a sign indicating a place of business of the employer.
	Advertising for the employer shows the employee's home office as one of the employer's places of business.
	The home office is covered by a business insurance policy or by a business rider to the employee's homeowner insurance policy.
	The employee is entitled to and actually claims a deduction for home office expenses for federal income tax purposes.
	The employee is not an officer of the company.



NEED MORE INFORMATION?

Contact a member of our team or to learn more visit withum.com.