

DELAWARE DIVISION OF REVENUE
TECHNICAL INFORMATION MEMORANDUM 2022-2
January 31, 2022

SUBJECT: TREATMENT OF WAGES FROM REMOTE WORK IN 2021

FOR INFORMATION, CONTACT:

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Delaware has received multiple questions regarding the treatment of wage income from employment in Delaware, where the taxpayer/employee worked from a remote location outside of Delaware. This TIM is issued to provide guidance to taxpayers about how to report days worked from a home located outside of Delaware on 2021 income tax returns.

Delaware law provides that compensation income is sourced to Delaware if it is “for personal services ... a. rendered in this State, or b. attributable to employment in this State and not required to be performed elsewhere.” 30 *Del. C.* § 1124(b).

The Delaware Division of Revenue has long considered work done by employees from their homes to be “attributable” to Delaware employment when the employee is working from home for their own convenience and not because the work is required by the employer to be performed from home. (See Schedule W instructions; *Flynn v. Director of Revenue*, Delaware Tax Appeal Board Dkt. No. 1504 (9/14/2011)).

During the COVID-19 Pandemic, Delaware operated under an extensive state of emergency that imposed various limitations in Delaware. As a result, many employers directed employees to work remotely from their homes, some of which are located in other states. As part of Delaware’s reopening plan, which lifted many of the broad-based limitations, the State continued to encourage telework to protect public health.

Because the State recognizes that telework has continued more broadly throughout 2021, taxpayers may report days worked from home as days worked outside of Delaware on Schedule W if either (a) the taxpayer’s employer directed the employee to work from home and directed that employees were not permitted to work at the Delaware location, or (b) the employer strongly encouraged remote work and required an employee seek advance permission to return to the office in person.

Once individual taxpayers were again permitted to return to offices within Delaware in person and to use their discretion as to when they would work remotely, taxpayers may not report days worked from home as days worked outside of Delaware on Schedule W if the employee was not required to work remotely but elected to do so.

The Division of Revenue may, in its discretion, require written documentation demonstrating any direction or advance permission given by an employer and applicable during 2021 with respect to remote work.

If you have any questions about this guidance, please contact the Delaware Division of Revenue at the number or email set forth above.

Jennifer R. Noel
Director of Revenue