

## Publication

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### Establishing State Tax Nexus Through Telecommuting Employees

A recent New Jersey case has refocused attention on the question of whether a company may unwittingly establish income tax or sales and use tax nexus in a state where the company otherwise does not have any business operations by accommodating an employee's request to work from his or her home in that state for the employee's convenience. This is a common phenomenon in the American workplace due, for example, to an employee's spouse needing to relocate to another state to start a new job or to a newly hired employee not wanting to relocate to the company's state for lifestyle reasons. However, there is remarkably little legal authority addressing the state tax nexus consequences of such telecommuting arrangements.

Many state tax practitioners and state tax administrators have concluded that telecommuting employees who interact with customers, such as salespersons and service technicians, may cause their company to have taxable nexus in the state where the employee resides because his or her job activities help the company exploit the state's marketplace for the company's products or services. In addition, employees who help produce the company's product or provide its service to customers from the employee's home office probably create taxable nexus for the company in the state where the employee engages in such activities. On the other hand, common wisdom has been that telecommuting employees who perform administrative or other "back office" duties for

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their company from a home office should not create taxable nexus for their company.

Tax partner John A. Biek authored this May-June 2012 Journal of Passthrough Entities article titled "Establishing State Tax Nexus Through Telecommuting Employees."