

# Emergency Rule

## Title 12—DEPARTMENT OF REVENUE Division 10—Director of Revenue Chapter 2—Income Tax

### EMERGENCY RULE

#### 12 CSR 10-2.019 Determination of Withholding for Work Performed at Temporary Work Location

*PURPOSE: This rule modifies the manner in which the amounts required to be withheld by certain employers for employees performing services for wages from a temporary work location are calculated during a defined period.*

*EMERGENCY STATEMENT: This emergency rule is necessary to respond to the Covid-19 public health emergency. This emergency rule is necessary to preserve a compelling governmental interest, in that this rule will prevent an undue burden to employers who have been required to take extraordinary steps to protect the health of their employees and the public at large in response to the Covid-19 pandemic. This emergency rule modifies the procedure for withholding and remitting Missouri state income tax and allows certain employers to elect to withhold and remit tax on the basis of primary work location when an employer's employees were working from a temporary work location during a specified period. The scope of this emergency rule is limited to circumstances creating the emergency and complies with the protections extended in the Missouri and United States Constitutions. The Department of Revenue believes this emergency rule is fair to all interested persons and parties under the circumstances. This emergency rule was filed on January 6, 2021, becomes effective on January 21, 2021, and expires July 19, 2021.*

#### (1) Definitions:

(A) Employer—The term “employer” as used in this rule has the same meaning as supplied by 12 CSR 10-2.015(2).

(B) Employee—the term “employee” as used in this rule has the same meaning as supplied by 12 CSR 10-2.015(6).

(C) Primary Work Location – The term “primary work location” means the address of the employer where the employee was regularly assigned to work immediately preceding the declaration date.

(D) Temporary Work Location—The term “temporary work location” means a location where the employee worked during the COVID-19 relief period that was in a state other than the state of the employee’s primary work location.

(E) Time and Attendance System —The term “time and attendance system” means a system in which—

1. The employee is required on a contemporaneous basis to record his or her work location for every day worked outside of the employee’s primary work location; and

2. The system is designed to allow the employer to allocate the employee’s wages for income tax purposes among all taxing jurisdictions in which the employee performs services for wages for such employer.

(F) Wages—The term “wages” as used in this rule has the same meaning as supplied by section 143.191.2, RSMo.

(G) Declaration Date—The term “declaration date” means the date upon which the United States Government declared a “Federally declared disaster” as defined in 26 USC section 165(i)(5)(A) with respect to the COVID-19 pandemic, specifically, March 13, 2020.

(H) COVID-19 Relief Period—The term “COVID-19 relief period” means the period of time beginning on the date upon which the United States Government declared a “Federally declared disaster” as defined in 26 USC section 165(i)(5)(A) with respect to the COVID-19 pandemic (March 13, 2020) and ending on December 31, 2020.

(2) For services performed by an employee after the declaration date and prior to the earlier of the time at which an employer began withholding based on a time and attendance system for such employee or the end of the COVID-19 relief period, each employer may elect to withhold income tax from wages paid to such employee as if such wages were earned from work performed at the employee’s primary work location, despite such employee working from a temporary work location during the COVID-19 relief period.

(A) This rule shall only apply to:

1. Employers that did not maintain a time and attendance system for all employees on or before the declaration date, and only where such employer is:

A. An employer having a primary work location in Missouri with employees working from temporary work locations in states other than Missouri; or

B. An employer having a primary work location in a state other than Missouri with employees working from temporary work locations in Missouri.

(3) Affidavit Required—Each employer who elects to withhold and remit tax based on the primary work location of its employees under section (2) of this rule shall submit an affidavit notifying the Department of Revenue on or before January 31, 2021, of the following:

(A) The employer did not have a time and attendance system in place for all employees as of the declaration date;

(B) The employer did not have a time and attendance system in place to identify the locations at which employees performed services during the COVID-19 relief period prior to the implementation of a time and attendance system, if an employer implemented a time and attendance system during the COVID-19 relief period;

(C) The employer will issue forms W-2 to employees consistent with the primary work location of each employee for all or part of the COVID-19 relief period during which an employee was not covered by a time and attendance system; and

(D) The employer will issue communication notifying impacted employees of the employer’s election made pursuant to section (2) of this regulation no later than five (5) business days after submission of the affidavit contemplated by this section.

#### (4) Examples:

(A) Employer maintains a primary work location for its employees in Missouri. Employer did not have a time and attendance system in place at the beginning of the COVID-19 relief period, but implemented one on November 1, 2020. Employer had employees working from temporary work locations in other states. Under section (2), employer elects to withhold wages as if the employees were working at the primary work location. As a result, employer will withhold Missouri income tax from wages paid to employees working from temporary work locations from March 13, 2020, through November 1, 2020.

(B) Employer maintains a primary work location for its employees in Missouri. Employer did not have a time and attendance system in place at the beginning of the COVID-19 relief period, and has not implemented one during the COVID-19 relief period. Employer had employees working from temporary work locations in other states. Under section (2), employer elects to withhold wages as if the employees were working at the primary work location. As a result, employer will withhold Missouri income tax from wages paid to employees working from temporary work locations from March 13, 2020, through December 31, 2020.

(C) Employer maintains a primary work location for its employees in Kansas. Employer did not have a time and attendance system in place at the beginning of the COVID-19 relief period, but implemented one on November 1, 2020. Employer had employees working from temporary work locations in Missouri. Under section (2), employer elects to withhold wages as if the employees were

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working at the primary work location. As a result, employer will withhold Kansas income tax from wages paid to employees working from temporary work locations in Missouri from March 13, 2020, through November 1, 2020. Employer is not required to withhold or remit Missouri income tax from the employees working from temporary work locations in Missouri.

(D) Employer maintains a primary work location for its employees in Kansas. Employer did not have a time and attendance system in place at the beginning of the COVID-19 relief period, and has not implemented one during the COVID-19 relief period. Employer had employees working from temporary work locations in Missouri. Under section (2), employer elects to withhold wages as if the employees were working at the primary work location. As a result, employer will withhold Kansas income tax from wages paid to employees working from temporary work locations from March 13, 2020, through December 31, 2020. Employer is not required to withhold or remit Missouri income tax from the employees working from temporary work locations in Missouri.

(E) Employer had a time and attendance system in place at the beginning of the COVID-19 relief period. Employer is ineligible to elect to withhold on the basis of the employer's primary work location, and instead withholds on the basis of the location where its employees actually performed services for wages for the employer as recorded by the time and attendance system.

(5) Nothing in this rule shall be interpreted as affecting in any way the income tax liability of any resident or nonresident within the meaning of chapter 143, RSMo, nor shall this rule be interpreted as affecting in any way any liabilities arising from any municipal income or earnings tax imposed by any political subdivision of the state of Missouri.

*AUTHORITY: sections 136.120, 143.191.3(1), 143.511, and 143.961, RSMo 2016. Emergency rule filed Jan. 6, 2021, effective Jan. 21, 2021, expires July 19, 2021. An emergency rule and a proposed rule covering this same material will be published in the Feb. 16, 2021 issue of the **Missouri Register**.*

*PUBLIC COST: This emergency rule will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the time the emergency is effective.*

*PRIVATE COST: This emergency rule will not cost private entities more than five hundred dollars (\$500) in the time the emergency is effective.*