

# PUBLICATION

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## Spotlight on Alabama: Recent Tax Tribunal Decision Should Be of Interest to Employers Using Remote Workers

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**A recent Tax Tribunal decision, *Mark E. Bollinger v. State of Alabama Department of Revenue, Inc.* 22-390-LP, should be of interest to Alabama employers using remote workers. In this case, Mark Bollinger worked for a large bank and was located in Birmingham. His work was remote, taking calls from bank customers at his residence. Post-Covid, Bollinger was allowed by his employer to work remotely from outside Alabama, so he left Alabama and relocated permanently to Idaho, continuing to do the work he had done while in Alabama.**

The Department took the position that Bollinger had not reported on his Alabama income tax return all of the Alabama income reported on his Form W-2 for the year of his departure. The Department made the adjustment to add the income to the return, and the adjustment resulted in a final assessment.

The Tax Tribunal first addressed the issue of domicile of Bollinger following the time of departure. The Tax Tribunal determined the evidence indicated Bollinger's intent was to permanently relocate to Idaho as of the time of his departure. Therefore, Bollinger was not subject to tax as a domiciliary of Alabama from that date forward.

Next, the Tax Tribunal addressed whether the income earned by Bollinger after he moved to Idaho was taxable as Alabama-source income. Using a "business transacted in Alabama" analysis, the Tax Tribunal found that "[Bollinger was] clearly engaged in business, i.e., a regular and legal employment with [the employer]," and thus the income he earned remotely was Alabama-source income. Interestingly, the Tax Tribunal repeated the notion that Bollinger "continued to transact business in Alabama via his employment with" his employer following his change of domicile (underscore supplied).

The Tax Tribunal's decision — that is, the taxation of a remote employee who once worked for an employer in Alabama — should cause some concern for all Alabama employers with similar remote workforce fact patterns. Other fact patterns could also be of concern, such as, for example, a newly hired employee from another state who is trained in Alabama by the Alabama-based employer and then returns to the home state to work remotely for that Alabama employer.

We plan to monitor this case and report on material developments.

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