

THE TAKE AWAY

The distinction between wages/salaries and self-employed business income is important for locum tenens providers as many engagements are constructed in a way that places the practitioner in the position of a contractor as opposed to an employee of the staffing agency. **If the taxpayer had been paid as a W2 employee, the reciprocity provision would have been valid and no tax would be owed to W. Va.**

and there is at least one reciprocity arrangement between non-border states—such as the compact between Ind., Va., Calif., Ore., and Ariz. In a reciprocity agreement, the income earned in a non-resident state is simply taxed by the state of the taxpayer's residence. Any withholding on the non-resident income for state taxes for the non-resident state is refunded when a tax return is filed.

WAGES VS. BUSINESS INCOME

In the case of the locum tenens professional, there was a reciprocity agreement in effect between her home state (Va.) and her temporary work state (W. Va.). On first impression, her tax advisor was correct in that income earned by a

Va. resident in W. Va. is only subject to tax in Va. However, **the tax advisor did not take into account that the provider's earnings would be paid as a contractor/self-employed.** State income tax reciprocity rules often distinguish between wages/salary and business income. A self-employed individual receives business income as opposed to wages or salary. For this reason, the W. Va. Tax Commission prevailed in its determination. **LL**

Reference: Decision No. 10-485P, Oct 27, 2011. W. Va. Office of Tax Appeals.



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