Taxing Times to Be a Telecommuter: Convenience Rules During COVID-19

POSTED ON SEP. 17, 2020

By

TIMOTHY P. NOONAN

DORAN J. GITTELMAN

Timothy P. Noonan is a partner in the Buffalo and New York City offices of Hodgson Russ LLP. Doran J. Gittelman is an associate in the New York City offices of Hodgson Russ LLP.

TIMOTHY P. NOONAN

DORAN J. GITTELMAN

In this installment of Noonan's Notes, the authors examine how states are handling a remote workforce during the pandemic and what is being done regarding individuals who have claimed a change of residency or work location during the crisis.

The pandemic has undoubtedly changed how we do business. Shelter-in-place orders and self-quarantining measures have individuals working remotely with no clear end in sight. And as many of us settle into newfound realities, several states have started to feel the impact of a telecommuting workforce.

Faced with budget deficits and fleeing residents, states are struggling to recapture tax revenue and provide incentives for high-net-worth individuals to return. Without corrective action, state revenue losses could be insurmountable. New York alone has projected a $13.3 billion shortfall for fiscal 2021 and a $61 billion decline through 2024.[1] To address deficits, hard-hit states will likely be more aggressive on audit and actively pursue individuals who have claimed a change of residency or work location during the crisis.

Introduction: Telecommuting During the Pandemic

You've seen the headlines: People are fleeing New York City, California, and other populous (and high-tax) areas.[2] So residency will be a huge focus for states in future years, and we can expect lots of activity and enforcement on residency issues. But beyond residency lies an equally pressing personal income tax audit issue: income apportionment and allocation — or how much income earned by a nonresident individual is taxable by the *nonresident* state. While the vast majority of states use a sourcing rule that points to the taxpayer's physical location, some have an exception to physical presence for telecommuters called the "convenience of the employer rule" — or more appropriately, the convenience rule.

Under this doctrine, the source of the employment compensation generated while working remotely depends on the reason for working remotely — specifically, whether the employee was working remotely for her own convenience or by necessity in the service of her employer. If the latter, the income source will be determined by the employee's physical location. If the former, the income source defaults to the employer's location.

The doctrine has been controversial for decades.[3] But the most relevant issue in today's world is the concept of necessity and, more pointedly, whose necessity. Necessity created by the employer? Governor? Or will other restrictive factors like health and safety suffice? And while only a handful of states employed a convenience rule, several others recently signaled an intention to apply something like it for pandemic-related telecommuting.

Axiom One: Residents Are Subject to Tax on All Income

With limited exceptions, individual taxpayers are subject to tax by their resident state on all income from whatever source. This includes wage income, income from intangibles, and other distributive income. This is why many taxpayers choose to live in states like Florida, which has no personal income tax. Other income tax considerations that motivate changes of domicile include favorable income tax rates, resident tax credits, and special income sourcing rules.

However, resident taxation is only half of the equation. Regardless of where an individual claims residency, he will pay personal income tax to states where he is not a resident on allocated and apportioned income.

Axiom Two: Nonresidents Are Subject to Tax on Apportioned and Allocated Income That Is Sourced to the State

Allocation refers to the assignment of income to a state, while apportionment concerns the division of income generated in a state. For example, income generated from the sale of a building is likely to be *allocated* to the property's situs state, whereas employment compensation from work performed within and outside a state would be *apportioned* — usually according to a work-day percentage. That said, states often use these concepts interchangeably. The unifying feature is the sourcing principle: the deemed location of income.

States have different rules for sourcing income, which depend on the nature of the compensation. Accounting for these variations can be challenging, especially where income is earned in multiple jurisdictions. Take for instance the allocation/apportionment rules for income generated from restricted stock units. Some states allocate or apportion the income based on how many days were worked in the state between the grant date and the vest date (New York), while others allocate or apportion it based on the ratio of compensation worked in the state from the first day of the grant year to the last day in the year of exercise (Connecticut).[4] Whenever there are two or more nonresident states with differing allocation or apportionment rules, there is a risk of multiple taxation of the same income.

The consequences of differing allocation or apportionment rules are often the most problematic when they vary between the resident state and the nonresident state. This is because the starting point is to double-tax income; all income is taxed in the resident state and taxed again when it is allocated or apportioned to the nonresident state. As will be outlined later, states have resident credit schemes to alleviate this double taxation, but the starting point is to allow both states the right to tax the income.

States are accustomed to overlapping allocation and apportionment rules regarding auxiliary compensation like stock options. These are relatively infrequent, albeit large, events. They are also accustomed to seeing this arise for highly compensated executives — or athletes, entertainers, and so forth. What we are seeing now is that states were less prepared to handle these same issues regarding regular wage income, for regular folks, at least not at the current volume. The convenience rule is one such wage-based sourcing variation that stands to have a big impact on state tax revenue.

The Convenience Rule

Under a traditional convenience rule, income is sourced to the employee's physical location if she is working remotely by necessity and to the employer's location if for her own convenience. Only five (and a half) states — Arkansas, New York, Delaware, Nebraska, and Pennsylvania — apply a convenience type rule, with Connecticut applying it in some circumstances.[5] While each rule varies slightly, the dichotomy for the most part remains the same: convenience or necessity.

The difference between these two concepts is significant in states like New York, which derive most of their tax revenue from personal income taxes. For perspective, out of $73.6 billion in tax revenue collected by New York in fiscal 2019, $48 billion was from personal income taxes.[6]

This begs the question: What will constitute necessity? As usual, New York has published the most guidance and its highest court has even affirmed the constitutionality of the rule — so let's start there.[7]

New York

New York's convenience rule is included in N.Y.C.R.R. section 132.18(a), which states:

> If a nonresident employee . . . performs services for his employer both within and without New York State, his income derived from New York State sources includes that proportion of his total compensation for services rendered as an employee which the total number of working days employed within New York State bears to the total number of working days employed both within and without New York State. . . . However, any allowance claimed for days worked outside New York State must be based upon the performance of services *which of necessity, as distinguished from convenience*, obligate the employee to out-of-state duties in the service of his employer. [Emphasis added.]

Before 2006, to satisfy the necessity requirement, nonresidents had to demonstrate that their jobs, by nature, could not be performed in New York.[8] The rule was tweaked by the State Department of Taxation and Finance in 2006, after which it no longer exclusively relied on physical necessity (that those duties could not be performed within New York).[9] The new rule established an exception for "normal work days" spent at a home office.[10] Under the new framework, these days would be treated as a day worked outside the state if the taxpayer's home office qualified as a "bona fide employer office."[11]

The abolition of the physical necessity requirement, in tandem with the evolving reasoning in the following cases, make for a potential argument in New York that necessity includes more than just what is required at the employer's behest.

Consider first *Matter of Unterweiser*, a 2003 decision in which a New York employer eliminated a nonresident employee's desk job and changed her work duties.[12] Because the office was not equipped to meet the requirements of her new position, the taxpayer performed her duties from her home in New Jersey. The tax department argued — and the Division of Tax Appeals agreed — that the taxpayer was working from home out of convenience, not necessity.

Compare *Unterweiser* to *Matter of Devers*, decided two years later.[13] In *Devers*, a New York employer again eliminated a nonresident taxpayer's office space and as a result, the employer formally "relocated" the taxpayer to his Virginia office, although the taxpayer worked out of his home in Connecticut. The taxpayer's access to the New York building was rescinded and he no longer communicated with the New York personnel. Based on these facts, an administrative law judge determined that the taxpayer worked outside of New York by necessity.

Later, in *Matter of Kakar* (2006), a taxpayer tried to prove that a New York office workspace was inadequate and lacked the necessary privacy, requiring the taxpayer to work remotely.[14] The ALJ disagreed, concluding that with a "minimum of ingenuity, arrangements could have been made" to provide the taxpayer with an adequate and secure work environment at the New York office — thus suggesting that the taxpayer could have worked in the office, but chose to work remotely for convenience.

In *Matter of Holt* (2007), an ALJ decided that a human resources compensation consultant was working remotely in Florida at his own convenience. The taxpayer had access to his employer's New York office and even traveled there occasionally for work. The ALJ found that the taxpayer was working remotely at his own convenience because he had a choice to work at home, and that it was "not a necessary out-of-state assignment imposed *by his employer*."[15]

On appeal, the Tax Appeals Tribunal affirmed the ALJ's decision in *Holt*, agreeing that there was no evidence to show that the taxpayer "was required by his employer" to perform his work remotely.[16] However, the tribunal added that:

> where there was no evidence that services performed at the taxpayer's out-of-state home could not have been undertaken at the employer's office in New York, such services have

been held performed out of state for the employee's convenience, not the employer's necessity.[17]

This clarification could be critical in future cases.

So how will this all unfold in 2020? So far, the tax department has been quiet. But you can easily see how the arguments will play out. For instance, in the initial months of the pandemic, only essential workers were permitted to work on-site in an employer's office. These essential employees were within designated industries such as healthcare, transportation, food services, construction, and so forth — which the governor deemed critical to infrastructure.

However, the remaining nonessential workforce was not permitted to work in the office, and instead was required (where possible) to work remotely. So no level of ingenuity or creativity would allow a nonessential worker of a business within a nonessential industry to work in her employer's New York City office without violating an executive order or jeopardizing the health and safety of both herself and her loved ones. Based on the reasoning in *Devers, Kakar,* and the tribunal decision in *Holt*, an argument can be raised that days worked at home because of the pandemic are days worked remotely by necessity, not convenience. But what about for businesses with essential workers that were allowed to stay open? Or what about the thousands of other businesses, post-lockdown, that kept their offices closed and their employees working remotely? Or the thousands of other businesses that opened but left it up to their employees about when to come in, or managed the in-office work to comply with the reduced capacity rules that are still in place?

The honest answer? We don't know. If the employer closed the office and required all employees to work remotely even after the government-imposed lockdowns, how could that be a convenience day? Per the analysis in *Holt*, certainly a taxpayer could argue that his services could not have been undertaken at the employer's office in New York because the New York office was closed. That said, as offices slowly open up in New York, perhaps a different analysis could apply. And it is very possible that the New York tax department or legislature may step in and change the analysis altogether. So this is certainly an issue to follow going forward.

Connecticut

Connecticut adopted the convenience of the employer test in 2019.[18] Unlike the New York convenience rule, Connecticut's rule is reciprocal, meaning that it only applies regarding residents of states that have adopted their own convenience rules. Because of how recent the Connecticut rule is, and the fact that no guidance has been issued, it is difficult to predict how the state will view days worked remotely because of the pandemic. In general, though, since the Connecticut personal income tax is patterned after New York statutes, Connecticut courts have looked to New York cases as persuasive authority when no Connecticut cases have addressed an issue.[19]

Delaware

Nonresident income sourced to Delaware includes:

> Compensation, other than pensions, as an employee in the conduct of the business of an employer, for personal services. . . . *attributable to employment in this State and not required to be performed elsewhere*.[20]

Schedule W of the Delaware Individual Non-Resident Income Tax Return adds:

> If income of non-resident taxpayers derived from Delaware sourced employment includes income earned while working outside of the State of Delaware, an allowance will be permitted for those days worked outside of the State. . . . Any allowance claimed must be based on necessity of work outside the State of Delaware in performance of duties for the employer, as opposed to solely for the convenience of the employee. Working from an office out of your home does not satisfy the requirements of "necessity" of duties for your employer and is considered for the convenience of the employee unless working from home is a requirement of employment with your employer.

Unlike the rules for New York and Connecticut, Delaware's convenience rule ties necessity directly to employer direction. This connection was validated by the Delaware Tax Appeal Board in *Flynn,* which stated:

> the language of the applicable statutes, as explained in Schedule W, is clear on its face and mandates that, in order for income earned outside this state by a non-resident taxpayer principally employed in this state not to be included in Delaware sourced income, the taxpayer's employer must have required the taxpayer to work outside the state.[21]

Nebraska

Nebraska's convenience rule states:

> If the nonresident's service is performed without Nebraska for his or her convenience, but the service is directly related to a business, trade, or profession carried on within Nebraska and except for the nonresident's convenience, the service could have been performed within Nebraska, the compensation for such services shall be Nebraska source income.[22]

Despite the apparent flexibility, the Department of Revenue issued guidance on May 19 regarding wage withholding, declaring that the DOR will not require an employer to change its payroll withholding for individuals who are now telecommuting because of the COVID-19 pandemic.[23] Nebraska's guidance adds that "a change in work location is not required beginning with the date the emergency was declared, March 13, 2020, and ending on January 1, 2021, unless the emergency is extended."[24]

Pennsylvania

Pennsylvania's convenience rule resembles New York's, but like Nebraska's, its DOR (and Philadelphia) released guidance in response to the COVID-19 pandemic.[25] According to the guidance, the department will not consider remote work because of the pandemic as a change to the sourcing of the employee's compensation. If an employee is working for a Pennsylvania-based employer, the employee's compensation remains Pennsylvania-sourced.

Arkansas

Arkansas adopted a convenience rule in February shortly before the pandemic.[26] The rule came from an Arkansas Revenue Legal Counsel Opinion that summarily determined that the wages of an employee working remotely out of state for an Arkansas employer would be subject to Arkansas income tax.[27] Legal counsel in the opinion made no reference to convenience or necessity of the employer.[28] Given how recently the opinion was issued and how conclusory the legal counsel's reasoning was, it is entirely unclear how the rule will be applied.

States with Other Telecommuting and Withholding Guidance

States without a convenience rule have jumped on the sourcing bandwagon — issuing statements regarding wage withholding during the pandemic for telecommuters.

New Jersey released withholding guidance early, stating that no changes to wage withholding will be required because of the pandemic.[29] Massachusetts followed with a similar rule, meaning that it would continue to require employees to pay Massachusetts taxes on their wage income even if they were working outside the state.[30] States such as Maryland have released guidance declaring that income earned from working remotely within Maryland is Maryland-sourced income.[31]

Georgia, too, issued guidance stating that if the employee is temporarily working in the state because of COVID-19, the wages related to the work days in Georgia will not be deemed earned in Georgia.[32] The guidance goes further, noting that the temporary protections will extend for periods when (1) "there is an official work from home order issued by an applicable federal, state or local government unit," or (2) "pursuant to the order of a physician in relation to the COVID-19 outbreak or due to an actual diagnosis of COVID-19, the employee is working at home."[33] Georgia even allows for an additional 14 days after the expiration of the protected period to allow for a return to normal work locations.[34]

We've kept track of the state updates regarding COVID-19.[35] Ultimately, without a strong argument that the pandemic created necessity, wage income earned by employees with offices in these states may be subject to tax in both the resident and nonresident state. Fortunately, states are constitutionally obligated to provide some relief to multiple taxation, which often takes the form of a resident tax credit, but this has its own host of problems. So on to that issue next.

Axiom Three: Residents Receive a Credit for Taxes Paid to Other Jurisdictions

The U.S. Constitution forbids states from levying taxes that "discriminate against interstate commerce or that burden it by subjecting activities to multiple or unfairly apportioned taxation."[36] To avoid unconstitutional multiple taxation, a resident state typically offers its residents a credit for taxes paid to other jurisdictions. To clarify, this does not mean that double taxation is necessarily unconstitutional. It only means that the apportionment/sourcing rule and complementing credit mechanism needs to pass constitutional muster.[37]

The resident tax credit can take several forms and will often not be dollar-for-dollar, because many credits are capped or prorated, and several depend on the state sourcing rules. For instance, consider a common sourcing variation that exists between the resident tax credit rules in New York and New Jersey.

New York offers resident taxpayers a limited credit for taxes paid to other jurisdictions on income derived from sources within the other jurisdiction, which is construed so as to accord with the definition of the term "derived from or connected with New York State sources."[38] In other words, the credit is determined by looking at New York sourcing rules to determine whether the income was derived from sources within the other jurisdictions.

New Jersey, however, provides a proportional credit for taxes actually paid on income properly taxed by another jurisdiction.[39] In other words, New Jersey will apply the other taxing jurisdiction's sourcing rules to determine whether the income was properly sourced to and taxed by the state.

On a multistate basis, states are all over the map. Some are like New York, offering up a limited credit mechanism that only will allow a credit for taxes paid to the other state if the income was sourced to that state using the home state's sourcing rules. Colorado and Maine also have rules like this. Others — like Oregon, Michigan, and Montana — have a broader provision like New Jersey's, allowing in most instances for a credit for taxes paid to the other state so long as the income was also taxed in the home state. And there are many states like South Carolina, which offers a credit for "taxes paid to another state on income from sources within that state,"[40] but without regulations or other authority interpreting whether "income from sources within that state" should be determined under South Carolina's sourcing rules or under another state's sourcing rules.

Why does this matter? Absent a resident tax credit, the income is subject to double taxation. Because resident tax credit systems may turn on the sourcing rules of the resident state and not the nonresident state, a credit may not be allowed for taxes paid on income sourced under a sourcing rule (that is, convenience rule or other telecommuting rule) that the resident state does not share with the nonresident state.

Let's see this through with a few hypotheticals involving Mark, Madeline, and Martha[41]:

> Mark lives in New Jersey and worked in New York before the pandemic. As a result of the shelter-in-place orders, he was required to work remotely from his home in New Jersey. As a New Jersey resident, Mark will pay tax on all of his income to New Jersey. As a telecommuter, assuming New York would take the position that the remote work was not by necessity, Mark will also pay tax on his earned income to New York as a nonresident under New York's convenience rule. He is fortunate in that New Jersey's resident tax credit rules look to the

nonresident state's sourcing rules. As a result, New Jersey will likely provide a proportional credit for taxes paid to New York because the income was taxed under New York's convenience rule.

Madeline is a resident of Connecticut and worked in New York with Mark before the pandemic. Like Mark, Madeline was required to work remotely from her home in Connecticut. She will pay resident tax to Connecticut, and assuming she was not working from home by necessity, Madeline will also pay nonresident tax on her earned income to New York under the convenience rule. It's likely that Madeline lucked out. Although Connecticut's resident tax credit uses its own sourcing rules, the state recently enacted a reciprocal convenience rule — meaning that Madeline's earned income would be sourced to New York under Connecticut's rules and that Connecticut would allow for a credit for taxes paid to New York. Of course, that's only if Connecticut and New York have the same view of the convenience rule. If Connecticut claims that these are necessity days, it likely would not provide a credit for the New York taxes paid. Situations like this could reignite the debate between these two states about the application of the convenience rule.

Martha also worked with Mark and Madeline out of the New York office, but changed her domicile to Colorado to be closer to her family. She will pay resident income tax to Colorado and, assuming the remote work was not by necessity, will also pay nonresident tax on the earned income to New York under its convenience rule. Because Colorado uses its own sourcing rules to determine the appropriateness of the taxes paid to other jurisdictions, and the state does not employ a convenience rule, Martha would likely not receive a credit for taxes paid to New York. Martha will be double taxed on her earned income.

What happens if we assume that Mark, Madeline, and Martha worked remotely by necessity? Without triggering the convenience rules, Mark, Madeline, and Martha would pay income tax to each of their resident states and would not pay income tax to New York as nonresidents. Because no taxes are being paid to other jurisdictions, there is no need for a resident tax credit.

This is good for Mark and Madeline, who may have only received a proportional or limited credit, and great for Martha, who was getting double taxed. It's not so good for New York. Given New York's budget deficit, there's a strong chance that the state will be aggressive with its convenience rule on audit.

What Now?

First and foremost, keep track of your days and communicate with your employer or tax adviser. Regardless of what state you are in, track where and when you worked, and *why* you worked remotely. Second, if you live or work in a state that has not already released guidance on income sourcing during the pandemic, keep an eye out for a publication. States are aware of these issues and are actively considering their options. Finally, take a shower . . . just because you are working remotely doesn't mean you shouldn't clean up once in a while!

FOOTNOTES

[1] New York State Fiscal Year 2021 Enacted State Budget Financial Plan.

[2] Brittany De Lea, "Will Coronavirus Crisis Spark Fresh Exodus From High-Tax States?" Fox Business, Apr. 14, 2020; De Lea, "Coronavirus Could Cause New York to Ramp Up Audits of Wealthy Taxpayers," Fox Business, Apr. 17, 2020; Ben Steverman, "NYC Hedge Funds Angle for Work-From-Home Windfall on Their Taxes," Bloomberg, July 13, 2020; Darla Mercado, "Leaving New York? Why You Might See Higher Tax Bills," CNBC, Aug. 13, 2020.

[3] *See*, *e.g.*, Paul R. Comeau, Timothy P. Noonan, and Joseph N. Endres, "New York's Revised Convenience Rule Provides Some Clarity and Continued Controversy," *Journal of Multistate Taxation and Incentives*, 18-27 (Aug. 2006).

[4] N.Y. Tax Law section 631(g); N.Y.C.R.R. section 132.24(b), (c)(3); Conn. Agencies Regs. section 12-711(b)-18(c).

[5] Conn. Gen. Stat. section 12-711(b)(2)(C); 30 Del. C. section 1124(b); Del. Schedule W; Neb. Admin. R. & Regs. section 003.01C; N.Y. TSB-M-06(5)I; 61 Pa. Code section 109.8; Ark. Rev. Legal Counsel Op. 1504 (Sept. 14, 2011).

[6] 2018–2019 New York State Tax Collections, Statistical Summaries and Historical Tables (Aug. 2019).

[7] *Zelinsky v. New York State Tax Appeals Tribunal*, N.Y.S. Div. of Tax App., ALJ Determination, DTA No. 817065 (Nov. 2, 2000); *Matter of Huckaby v. New York State DTA,* 4 N.Y.3d 427, Dkt. No. 8 (2005), *cert. denied,* Dkt. No. 04-1734 (Oct. 31, 2005).

[8] N.Y. TSB-M-06(5)I; *see also* 2005 Form IT-203-I (Instructions for Nonresident and Part-Year Income Tax Return).

[9] N.Y. TSB-M-06(5)I.

[10] *Id.*

[11] *Id.* ("A normal work day means any day that the taxpayer performed the usual duties of his or her job. For this purpose, responding to occasional phone calls or emails, reading professional journals or being available if needed does not constitute performing the usual duties of his or her job.")

[12] N.Y. Tax App. Trib., DTA No. 818462 (July 31, 2003).

[13] N.Y.S. Div. of Tax App., ALJ Determination, DTA No. 819751 (May 5, 2005).

[14] N.Y.S. Div. of Tax App., ALJ Determination, DTA No. 820440 (Feb. 16, 2006).

[15] N.Y.S. Div. of Tax App., DTA No. 821018 (Nov. 1, 2007) (emphasis added).

[16] N.Y. Tax App. Trib., DTA No. 821018 (July 17, 2008).

[17] N.Y. Tax App. Trib., DTA No. 821018 (July 17, 2008) *citing Matter of Simms v. Procaccino*, 47 A.D.2d 149 (1975).

[18] Conn. Gen. Stat. section 12-711(b)(2)(C).

[19] *Amen v. Commissioner,* Conn. Super. Ct., judicial district of New Britain, Docket No. CV 02 0515337 (Apr. 14, 2005).

[20] 30 Del. C. section 1124(b) (emphasis added).

[21] *Flynn v. Delaware Director of Revenue*, Dkt. No. 1504 (Sept. 14, 2011).

[22] Neb. Admin. Code, title 316, section 22-003.01C(1).

[23] Nebraska Department of Revenue, Frequently Asked Questions about the Income Tax Changes Due to the COVID-19 National Emergency.

[24] *Id.*

[25] 61 Pa. Code section 109.8; Pennsylvania DOR, Find Answers, Answer ID 3738 (Apr. 3, 2020).

[26] This ruling appears in conflict with Arkansas Individual Income Tax Reg. 1.26-52-202(c), which requires allocation of nonresident employment income based on where the work was performed.

[27] Ark. Rev. Legal Counsel Op. 1504, *supra* note 5.

[28] *Id.*

[29] N.J. Division of Taxation, Telecommuter COVID-19 Employer and Employee FAQ.

[30] 830 CMR 62.5A.3; *see also* Massachusetts DOR, TIR 20-10 (July 21, 2020).

[31] Comptroller of Maryland, Tax Alert 5-04-20.

[32] Georgia DOR, Coronavirus Tax Relief FAQs.

[33] *Id*.

[34] *Id*.

[35] For a current list of state updates, check out our tracker online.

[36] *MeadWestvaco Corp. ex rel. Mead Corp. v. Illinois DOR*, 553 U.S. 16, 24 (2008)

[37] *Zelinsky*, *supra* note 7; *Maryland v. Wynne,* 575 U.S. 542 (2015).

[38] N.Y. Tax Law section 620(a); N.Y.C.R.R. 20 section 120.1; N.Y.C.R.R. 20 section 120.4(d).

[39] N.J. Rev. Stat. section 54A:4-1(a); N.J. Admin. Code section 18:35-4.1(a)(1)(i); Instructions to Form NJ-1040; New Jersey Form GIT-3B.

[40] S.C. Code Ann. section 12-6-3400(A)(1).

[41] Continuing the fine tradition of using Noonan kids' names for our examples.

END FOOTNOTES