

Gambling Income Taxable in Other State Does Not Increase Credit Limitation Under IITA Section 601(b)(3). (This is a GIL.)

April 28, 2017

Re: Illinois income tax

Dear Xxxxx:

This is in response to your letter received August 29, 2016, in which you request information regarding Illinois income tax. The nature of your request and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 86 Ill. Adm. Code 1200.120(b) and (c), which may be found on the Department's web site at www.tax.illinois.gov.

Your letter states as follows:

My tax return was changed for a credit claimed from gambling winnings earned in another state. I earned and reposted \$\$\$ of W-2Gs from IN and IA and paid \$\$\$ of state income taxes to those states. I properly included the income on my Illinois return and claimed a state tax credit of \$\$\$ on Schedule CR. I am not allowed to file or claim a refund from those states. Pursuant to the IL Income Tax Act (35 ILCS 5.601(3) "tax which is imposed upon or measured by income and which is paid by a resident for a taxable year to another state or states on income which is also subject to the tax imposed by subsections 201(a) and (b) of this Act shall be credited against the tax imposed..."

After extensive research, I cannot find an IL legal statute, revenue ruling or amendment allowing double taxation on IL residents for this type of income. By disallowing my lawful credit, I am effectively being required to pay state income taxes twice on the same source of income. Once to the state of Indiana and Iowa where it was earned/won and withheld; and again to Illinois based on my Federal AGI which includes this income.

I respectfully request this credit be allowed and my IL tax account be restated to zero. I respectfully request something in writing documenting and proving that I am legally subject to double taxation by both states. Why is the legal statute under the IL Tax Act difficult or impossible to find despite my extensive research?

RULING

Section 601(b)(3) of the Illinois Income Tax Act ("IITA"; 35 ILCS 5/601(b)(3)) provides Illinois residents a credit for income taxes paid to other states, as follows:

The aggregate amount of tax which is imposed upon or measured by income and which is paid by a resident for a taxable year to another state or states on income which is also subject to the tax imposed by subsections 201(a) and (b) of this Act shall be credited against the tax imposed by subsections 201(a) and (b) otherwise due under this Act for such taxable year.

...

For taxable years ending on or after December 31, 2009, the credit provided under this paragraph for tax paid to other states shall not exceed that amount which bears the same ratio to the tax imposed by subsections 201(a) and (b) otherwise due under this Act as the amount of the taxpayer's base income that would be allocated or apportioned to other states if all other states had adopted the provisions in Article 3 of this Act bears to the taxpayer's total base income subject to tax by this State for the taxable year. The credit provided by this paragraph shall not be allowed if any creditable tax was deducted in determining base income for the taxable year. Any person claiming such credit shall attach a statement in support thereof and shall notify the Director of any refund or reductions in the amount of tax claimed as a credit hereunder all in such manner and at such time as the Department shall by regulations prescribe (Emphasis added).

The italicized language above limits the amount of tax paid to other states that may otherwise qualify for the credit. That limitation is determined by multiplying the amount of Illinois income tax otherwise imposed for the taxable year by a fraction, the numerator of which is the amount of the taxpayer's base income that would be allocated or apportioned outside of Illinois assuming that all other states adopted Illinois' allocation and apportionment rules as set forth in Article 3 of the IITA, and the denominator of which is the taxpayer's total base income for the taxable year. Under this provision, only income that would have been taxable by other states applying Illinois law is included in the numerator of the fraction thereby increasing the credit limitation.

Under IITA Section 301(c)(2), gambling income of a nonresident is not allocated to Illinois. As a result, if all other states had adopted IITA Section 301(c)(2), your gambling income would not have been taxable in such other states. Therefore, your gambling income is not added to the numerator of the limitation fraction. Assuming that none of your other base income would be allocated or apportioned to other states applying Illinois law, your credit is limited to \$0.

As stated above, this is a general information letter which does not constitute a statement of policy that applies, interprets or prescribes the tax laws, and it is not binding on the Department. If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b). If you have any further questions regarding this letter, you may contact me at (217) 782-2844.

Sincerely,

Brian L. Stocker
Associate Counsel (Income Tax)