IT-19-0008-GIL 05/10/2019 WITHHOLDING – OTHER RULINGS

A general explanation is provided of the principles for determining when compensation paid to an employee providing services within and without Illinois is subject to withholding. (This is a GIL.)

May 10, 2019

Re: Illinois income tax

Dear Xxxx:

This is in response to your letter received April 19, 2019, 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:

> I am writing to seek clarity and your advice on the following issue:
>
> My employer COMPANY issued me a W2 with multiple states listed because I am a consultant who lives full-time in STATE 1 but traveled to STATE 2 for work last year. My state income listed in Box 16 for both states exactly matches my federal income in Box 1 ($$$). My employer's Payroll & Tax department tells me this is the correct way to show the income in Box 16 for each state because both STATE 1 and STATE 2 require full reporting of income.
>
> However, upon calling the Illinois Department of Revenue, I was told that I either need a) a corrected W2 with the income allocated between the states or b) a letter on COMPANY letterhead from the payroll department to Illinois Department of revenue indicating how much of my wages would have been allocated to each state.
>
> Did COMPANY report my income appropriately? If not, what legal statute or reference can I list for them so this is corrected in the future? What steps should I take to file correctly?
>
> If Option B is correct, COMPANY has requested me to get a letter from your office indicating which details are required on the letter that COMPANY should send to the Department of Revenue. Can you either mail this to me or send the details via email to E-Mail address?

RULING

Section 701of the Illinois Income Tax Act (35 ILCS 5/701) provides, in part:

> (a) In General. Every employer maintaining an office or transacting business within this State and required under the provisions of the Internal Revenue Code to withhold a tax on:

(1) compensation paid in this State (as determined under Section 304(a)(2)(B) to an individual; or

(2) payments described in subsection (b) shall deduct and withhold from such compensation for each payroll period (as defined in Section 3401 of the Internal Revenue Code) an amount equal to the amount by which such individual's compensation exceeds the proportionate part of this withholding exemption (computed as provided in Section 702) attributable to the payroll period for which such compensation is payable multiplied by a percentage equal to the percentage tax rate for individuals provided in subsection (b) of Section 201.

(b) Payment to Residents. Any payment (including compensation, but not including a payment from which withholding is required under Section 710 of this Act) to a resident by a payor maintaining an office or transacting business within this State (including any agency, officer, or employee of this State or of any political subdivision of this State) and on which withholding of tax is required under the provisions of the Internal Revenue Code shall be deemed to be compensation paid in this State by an employer to an employee for the purposes of Article 7 and Section 601(b)(1) to the extent such payment is included in the recipient's base income and not subjected to withholding by another state. Notwithstanding any other provision to the contrary, no amount shall be withheld from unemployment insurance benefit payments made to an individual pursuant to the Unemployment Insurance Act unless the individual has voluntarily elected the withholding pursuant to rules promulgated by the Director of Employment Security.

Section 304(a)(2)(B) of the Illinois Income Tax Act (35 ILCs 5/304) provides that, for employees other than professional athletes:

Compensation is paid in this State if:

(i) The individual's service is performed entirely within this State;

(ii) The individual's service is performed both within and without this State, but the service performed without this State is incidental to the individual's service performed within this State; or

(iii) Some of the service is performed within this State and either the base of operations, or if there is no base of operations, the place from which the service is directed or controlled is within this State, or the base of operations or the place from which the service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in this State.

In Article 3 of the Illinois Income Tax Act, Section 301(a) of the Illinois Income Tax Act (35 ILCS 5/301) provides:

All items of income or deduction which were taken into account in the computation of base income for the taxable year by a resident shall be allocated to this State.

The amount of Illinois wages that should be reported on the Form W-2 is the amount "paid in this State" on which withholding is required. According to your letter, you are a "consultant who lives fulltime in STATE 1 but traveled to STATE 2 for work last year." From this information, it appears as if either Section 304(a)(2)(B)(ii) or (iii) apply to your situation. Because of this, the $$$ you earned would be considered compensation "paid in this State" for purposes of Section 701 of the Illinois Income Tax Act. Also, as an Illinois resident, under Section 301(a) of the Illinois Income Tax Act, your compensation "paid in this State" is allocated entirely to STATE. Therefore, your employer did correctly report your earnings on your W-2. The fact that, under STATE 2 law, some or all of the compensation may be taxable by STATE 2 and subject to STATE 2 withholding is not relevant. You should file your Illinois taxes based on your current Illinois W-2. No amended W-2 or letter from your employer is required.

Further guidance on when compensation is "paid in this State" can be found at 86 Ill. Adm. Code Section 100.7010, which can be found at:

http://www.ilga.gov/commission/jcar/admincode/086/086001000S70100R.html

and in Publication 130, which can be found at:

https://www2.illinois.gov/rev/research/publications/pubs/Documents/pub-130.pdf

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) 557-5365.

Sincerely,

Michael D. Mankowski
Associate Counsel - Income Tax