

**Illinois Department of Revenue
Regulations**

Title 86 Part 100 Section 7010 COMPENSATION PAID IN THIS STATE (IITA SECTION 701)

**TITLE 86: REVENUE
CHAPTER I: DEPARTMENT OF REVENUE**

**PART 100
INCOME TAX**

Section 100.7010 Compensation Paid in this State (IITA Section 701)

- a) Except as provided in this Section, or in Section 100.7090 with respect to reciprocal withholding exemption agreements for employees residing in certain states, withholding is required with respect to "compensation paid in this State" under Section 100.3120.
- b) Withholding from Nonresident Employees. *For taxable years beginning on or after January 1, 2020, in determining compensation paid in this State under IITA Section 304(a)(2)(B) for purposes of this Section:*
 - 1) *If an employer maintains a time and attendance system that tracks where employees perform services on a daily basis, then data from the time and attendance system shall be used. (IITA Section 701(a-5)(1)) For purposes of this subsection (b)(1), "time and attendance system" means a system:*
 - A) *in which the employee is required, on a contemporaneous basis, to record the work location for every day worked outside of the State where the employment duties are primarily performed (IITA Section 701(a-5)(1)(A)); and*
 - B) *that is designed to allow the employer to allocate the employee's wages for income tax purposes among all states in which the employee performs services (IITA Section 701(a-5)(1)(B)).*
 - 2) *In all other cases, the employer shall obtain a written statement from the employee of the number of days reasonably expected to be spent performing services in this State during the taxable year. Absent the employer's actual knowledge of fraud or gross negligence by the employee in making the determination or collusion between the employer and the employee to evade tax, the certification made by the employee and maintained in the employer's books and records shall be prima facie evidence and constitute a rebuttable presumption of the number of days spent performing services in this State. (IITA Section 701(a-5)(2))*
 - 3) The provisions of this subsection (b) are relevant only to the issue of whether or not the employer has withheld the proper amount of Illinois income tax from the compensation of an employee. The amount of an employee's compensation "paid in this State" for all other purposes must be determined by using the actual working days within and outside of this State.
- c) Deferred Compensation

- 1) Under deferred compensation agreements, payments are made by an employer to an employee for service rendered at an earlier date. In many agreements, the employee receiving deferred compensation payments is not required to render any current service whatsoever, whereas in others he may be required to hold himself available to render advisory and consultative service, if called upon to do so, and to refrain from competition, but in either case, the amount of compensation is unrelated to any service being currently rendered. Payments made under that kind of deferred compensation agreement will be deemed to meet the tests set forth in Section 100.3120 for compensation paid in Illinois if paid to the individual while a resident of this State. Conversely, payments made under that kind of agreement will not be subject to withholding if paid to the individual while a nonresident. Amounts paid to nonresidents under deferred compensation agreements may be allocated to Illinois under IITA Section 302(a) in accordance with Section 100.3120 notwithstanding the fact that those amounts are not subject to withholding.

- 2) This subsection (c) may be illustrated by the following example:

EXAMPLE: A is a corporate executive. On January 1, 1965, A entered into an agreement with B corporation under which A was to be employed by B in an executive capacity for a period of 5 years. Under the contract A is entitled to a stated annual salary and to additional compensation to be credited to a bookkeeping reserve account and deferred, accumulated and paid in annual installments of \$5,000 on A's retirement beginning January 1, 1970. In the event of A's death prior to exhaustion of the account, the balance is to be paid to A's personal representative. A is not required to render any service to B after December 31, 1969. During 1970, A is paid \$5,000 while a resident of Illinois. This amount will be subject to withholding, because A's prior service will be deemed to have met one of the tests for compensation paid in Illinois.

(Source: Amended at 44 Ill. Reg.10907, effective June 10, 2020)