

General Information Letter: Government employee retirement and disability plan income is excluded from Illinois base income.

July 24, 2001

Dear:

This is in response to your letter that our office received on June 15, 2001 in which you state the following:

I have been hearing that there is no state tax on deferred compensation benefits, for state and local governments. Please confirm this by sending me something in writing to this effect. Please fax or mail me any information that you have.

According to the Department of Revenue ("Department") regulations, the Department may issue only two types of letter rulings: Private Letter Rulings ("PLR") and General Information Letters ("GIL"). The regulations explaining these two types of rulings issued by the Department can be found in 2 Ill. Adm. Code §1200, or on the website <http://www.revenue.state.il.us/legalinformation/regs/part1200>.

Due to the nature of your inquiry and the information presented in your letter, we are required to respond with a GIL. GILs are designed to provide background information on specific topics. GILs, however, are not binding on the Department.

Section 203(a) of the Illinois Income Tax Act ("IITA"), 35 ILCS 5/101 et seq, states that in the case of an individual, base income means an amount equal to the taxpayer's (federal) adjusted gross income subject to certain statutory addition and subtraction modifications listed in Section 203(a)(2). Among the subtractions is Section 203(a)(2)(F) which provides a subtraction for:

An amount equal to all amounts included in such total pursuant to the provisions of Section 402(a), 402(c), 403(a), 403(b), 406(a), 407(a), and 408 of the Internal Revenue Code, or included in such total as distributions under the provisions of any retirement or disability plan for employees of any governmental agency or unit, or retirement payments to retired partners, which payments are excluded in computing net earnings from self employment by Section 1402 of the Internal Revenue Code and regulations adopted pursuant thereto[.]

The Internal Revenue Code ("IRC") Section 457 is entitled "Deferred Compensation Plans of State and Local Governments and Tax-Exempt Organizations." The Department has taken the position that IRC 457 deferred compensation plans are government retirement plans and distributions from such plans are an allowable subtraction modification under Section 203(a)(2)(F). Also, no Illinois income tax withholding is required with respect to distributions from such plans. Therefore, although we lack specifics with respect to any particular plan about which you have inquired in your letter, we can advise you that to the extent that the plan is a government deferred compensation plan under IRC 457 it will qualify for the subtraction authorized by Section 203(a)(2)(F) of the IITA.

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As stated above, this is a general information letter which does not constitute a statement of policy that either applies, interprets or prescribes tax law. It is not binding on the Department. Should you have additional questions, please do not hesitate to contact our office.

Sincerely,

Heidi Scott

Staff Attorney -- Income Tax