

General Information Letter: Wages paid to a nonresident who is based in another state and performs no services in Illinois are not subject to Illinois income tax or to withholding.

May 31, 2006

Dear:

This is in response to your letter dated May 19, 2006, in which you request advice. Department of Revenue (“Department”) regulations require that the Department issue only two types of letter rulings, Private Letter Rulings (“PLRs”) and General Information Letters (“GILs”). PLRs are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. GILs do not constitute statements of agency policy that apply, interpret or prescribe the tax laws and are not binding on the Department. For your general information, the regulation governing the issuance of letter rulings, 2 Ill. Adm. Code Part 1200 regarding rulings and other information issued by the Department, can be accessed at the Department’s website. That address is www.revenue.state.il.us/legalinformation/regs/part1200.

The nature of your question and the information provided require that we respond only with a GIL.

In your letter you state as follows:

I am writing this letter to be better informed of the State of Illinois Tax laws. I also have included in this faxed letter copies of the ITR-76.

I have an issue that when I spoke with the office in Springfield that they could not answer, and suggested that I contact the above office.

My issue is:

I am not an Illinois resident and I do not work in Illinois. My company is based in Illinois; I am a sales representative that works out of my home in CITY Nevada. Taxes were withheld from Illinois, the schedule CR because I am a non resident does not help me because I am a non resident living in Nevada that does not have state tax.

Please advise me how to receive the refund for what was withheld for the year 2005 & and I would also need to know what I should do about the year 2006 (should I notify my company to stop withholding the tax?) I am not clear on what to do and would appreciate your help.

Ruling by Department

In response to your inquiries, please be advised that Section 302(a) of the Illinois Income Tax Act (IITA) set forth the rule governing the allocation by state of compensation (i.e., wage) income paid to a person who is not a resident of Illinois. That statute says that “All items of compensation paid in this State (as determined under Section 304(a)(2)(B)) to an individual who is a nonresident at the time of such payment and all items of deduction directly allocable thereto, shall be allocable to this State.”

IITA Section 304(a)(2)(B) provides in pertinent part:

(B) 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 your letter, you state that you do not work in Illinois, but rather out of your home in Nevada. Assuming that you mean that none of the services you perform for your employer take place within Illinois, then your compensation is not allocable to Illinois under any of the tests mentioned in IITA 304(a)(2)(B), because it is not "paid in Illinois." For this reason, your employer should not be withholding any Illinois income tax. Furthermore, you would have no Illinois income tax liability.

The ITR-76 notice you received recognizes that your compensation income may not be allocable to and taxable in Illinois. The last paragraph, last sentence on page 3 of said notice allows you to dispute the proposed Illinois tax assessment based on the argument that your income is not "paid in Illinois." It directs that if you disagree with the Department's proposed assessments "and you are a nonresident... of Illinois, please send us a statement from your employer, on company letterhead, stating that your wages were not earned in Illinois, and Illinois tax was withheld in error." By providing the requested information, you will avoid the additional proposed tax.

In order to recover the overpayment of tax for 2005 for wages not earned in Illinois, you or a tax preparer will need to file an amended Illinois income tax return for that year on Form IL-843 or IL-1040-X.

In order to avoid having the same problem for the remainder of 2006 and for future years, you should instruct your employer to cease withholding Illinois income tax from your wages. You might show them a copy of this correspondence to support your position.

As stated above, this is a GIL 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 wish to obtain a PLR which will bind the Department with respect to the application of the law to specific facts, please submit a request conforming to the requirements of 2 Ill. Adm. Code Part 1200.

Sincerely yours,

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