

TITLE 86: REVENUE

**PART 100
INCOME TAX**

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

- a) General rules
 - 1) Withholding is required with respect to "compensation paid in this State" - except as provided in reciprocal withholding exemption agreements for employees residing in certain states. (See Section 100.7090.) Illinois will recognize reciprocal withholding exemption agreements for those members of professional sports teams whose compensation is "paid in this State" under Section 100.3100(e), to the extent that the state of residence of the team by which they are employed recognizes the reciprocal withholding exemption agreement with respect to individuals employed by teams with Illinois residence. The entire amount of such compensation is subject to withholding if withholding is required under Section 100.7000. The tests for determining whether compensation is paid in this State appear in IITA Section 304(a)(2)(B) and are substantially the same as those used to define "employment" in the Illinois Unemployment Compensation Act [820 ILCS 405] (and similar unemployment compensation acts of other states). Compensation is paid in this State if:
 - A) The individual's service is localized in this State because it is performed entirely within this State;
 - B) The individual's service is localized in this State although it is performed both within and without this State, because the service performed without this State is incidental to the individual's service performed within this State; or
 - C) The individual's service is not localized in any state but some of the service is performed within this State and either; the base of operations, or if there is not a base of operations, the place from which the service is directed or controlled is within this State, or the base of operations of 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.
 - 2) For purposes of subsection (a)(1)(A), *beginning with taxable years ending on or after December 31, 1992*, for all persons who are members of professional sports teams that are *residents of states that impose a comparable tax liability on all persons who are members of professional sports teams that are residents of*

this State, . . . , in the case of persons who perform personal services under personal service contracts for sports performances, services by that person at a sporting event taking place in Illinois shall be deemed to be a performance entirely within this State. (IITA Section 304(a)(2)(B))

- 3) The foregoing rules are to be applied in such manner that, if they were in effect in other states, an item of compensation would constitute "compensation paid in" only one state. Thus, if an item would, under these rules, constitute compensation paid in a state other than Illinois because the individual's service was localized in such other state under the test of subsection (a)(1)(A), it could not also be compensation paid in Illinois.
- b) Place of residence of employee
- 1) In general, except in the limited circumstances referred to in subsection (a)(1)(C) and subsections (b)(2) and (3), the place of residence of any employee is irrelevant to the determination of "compensation paid in this State", and, therefore, whether withholding is required with respect to such employee. However, compensation paid to residents that would not otherwise be considered "compensation paid in this State" applying the definition in IITA Section 304(a)(2)(B) may be deemed "compensation paid in this State" under IITA Section 701(b) and therefore be subject to withholding in accordance with Section 100.7030 of this Part. In addition, compensation paid to residents of a state with which Illinois has entered into a reciprocal agreement (see Section 100.7090) and that would be considered "compensation paid in this State" applying the rules of IITA Section 304(a)(2)(B) is exempt from withholding.
 - 2) Federal law affects the authority of the State of Illinois to subject certain employees of railroads, motor carriers, merchant mariners, and air carriers to Illinois income taxation and withholding. See Section 100.2590 which provides that certain employees of rail carriers, motor carriers, merchant mariners, and air carriers may only be subject to the income tax laws of any state or subdivision of that state of the employee's residence.
 - 3) Federal law also affects the authority of the State to withhold income tax from employees of certain water carriers and merchant mariners. 49 USCA 11108 states that wages due or accruing to a master or seaman on a vessel in the foreign, coastwise, intercoastal, interstate, or noncontiguous trade or an individual employed on a fishing vessel or any fish processing vessel may not be withheld under the tax laws of a state or a political subdivision of a state. However, this Section does not prohibit withholding wages of a seaman on a vessel in the coastwise trade between ports in the same state if the withholding is under a voluntary agreement between the seaman and employer of the seaman. It should be noted that this provision affects only the authority of this state to have Illinois income tax withheld from wages of these employees. It does not affect the obligation of these employees to pay Illinois income taxes or to make payments of estimated income taxes as required under IITA Section 803.
- c) Localization tests
- l) If compensation is paid in this State because the service is localized here under either of the tests set forth in subsections (a)(1)(A) and (B), no other factors need be

considered. In such cases, the place of the base of operations, the place from which the service is directed or controlled, and the place of the individual's residence are all irrelevant. (But see Section 100.7090.)

- 2) In determining whether an individual's service performed without this State is incidental to his service performed within this State for purposes of the test set forth in subsection (a)(1)(B), the term "incidental" means any service which is necessary to or supportive of the primary service performed by the employee or which is temporary or transitory in nature or consists of isolated transactions. The incidental service referred to above may or may not be similar to the individual's normal occupation so long as it is performed within the same employer-employee relationship. That is, an individual who normally performs all of his service in this State may be sent by his employer to another state to perform service which is totally different in nature from his usual work or he may be sent to do similar work. So long as such service is temporary or consists merely of isolated transactions, it will be considered to be incidental to his service performed within this State, and his entire compensation will be subject to withholding.
- 3) In some cases, it may be difficult to determine whether service performed in another state is incidental to service performed within this State. In any such case, the facts (including any contract of employment) should be carefully considered. In many instances, the contract of employment will provide a definite territorial assignment which will be prima facie evidence that the service is localized within such territory. However, the presence or absence of a contract of employment is but one fact to be considered. In every case, the ultimate determination to be made is whether the individual's service was intended to be and was in fact principally performed within this State and whether any service which was performed in another state was of a temporary or transitory nature or arose out of special circumstances at infrequent intervals. The amount of time spent or the amount of service performed without this State should not be regarded as decisive, in itself, in determining whether such service is incidental to service performed within this State. For example, an individual normally performing service within this State might be sent on a special assignment to another state for a period of months. The service in the other state would nevertheless be incidental to service within this State if such special assignment were an isolated transaction.
- 4) This Section may be illustrated by the following examples:
 - A) A is a resident of State X and is a salesman for the B corporation, located in State Y. A's base of operations is his home in State X and his service is controlled from State Y. All of A's customers are located in Illinois. A's compensation is subject to withholding even though he is a nonresident with a State X base of operations, who is directed from State Y, because all of his service is performed in Illinois.
 - B) A is a resident of State X and a salesman for the B Corporation, located in State X. A's territory covers the northern part of Illinois. Sporadically, A is requested by B corporation to call on particular customers who are

located in State X. The compensation for service which A performs in Illinois and State X is subject to withholding because the service performed in State X is incidental to the service performed in Illinois, since it consists of isolated transactions.

- C) The facts are the same as in the previous example except that A's regular territory covers several counties in Illinois and one or two towns in State X. A goes to the State X towns on a regular basis even though more than 95% of his time and sales are with reference to his Illinois territory. The compensation for service which A performs in Illinois and State X is not localized in Illinois within the meaning of subsection (a)(2) because the service performed in State X is regular and permanent in nature and is not necessary to or supportive of sales made in Illinois. Whether withholding is required must therefore be determined under subsection (a)(1)(C) (see subsections (d) and (e)).

D) A works for B construction company in Chicago. Occasionally the company obtains a construction job in State X which may last from one to several weeks. A is sent by the company to supervise the construction jobs in State X. The compensation for the service A performs in Illinois and State X is subject to withholding because the service performed in State X, being temporary in nature, is incidental to the service which he performs in Illinois.

- E) A is a resident of Illinois and a buyer for a department store located in State X. Regular buying trips by A to Illinois are incidental to the service performed in State X because they are necessary to and supportive of A's primary duties which are localized in State X and not in Illinois. Unless compensation for the services which A performs in Illinois and State X is deemed "compensation paid in this State" pursuant to IITA Section 701(b) and Section 100.7030 of this Part, compensation for the services A performs in Illinois and State X is not subject to withholding, notwithstanding that A being a resident, is taxable in Illinois on such compensation under IITA Sections 201 and 301(a).

d) Base of operations

- 1) The localization tests are not applicable where an individual's employment normally or continually includes service within this State and also services without the State which are not "incidental" to the services performed within this State. In such case, if the individual's base of operations is within this State, his entire compensation will be subject to withholding, but if his base of operations is without this State, none of his compensation will be subject to withholding.
- 2) The term "base of operations" refers to the place or fixed center from which the individual works. An individual's base of operations may be his business office (which may be maintained in his home), or his contract of employment may specify a place at which the employee is to receive his directions and instructions. In the absence of more controlling factors, an individual's base of

operations may be the place to which he has his business mail, supplies, and equipment sent or the place where he maintains his business records.

3) This Section may be illustrated by the following examples:

- A) A is a salesman for the B corporation located in Chicago. His territory includes Illinois, State X and State Y. A uses the corporation office in Chicago as a base of operations. The compensation for service performed by A is subject to withholding because the service is not localized in any of the three States in which it is performed, but part of the service is performed in Illinois and A's base of operations is in Illinois.
- B) A is a salesman for the B corporation located in Chicago. A lives in State X and his territory includes State X and part of Cook County, Illinois. A starts his sales calls from and returns to his home daily. He keeps a catalogue and copies of correspondence from customers at his home, and writes his sales reports there. About once a week he reports to B's sales office in Chicago for consultation with and directions from the sales manager. Communications from customers to A are addressed to the Chicago sales office. A's letters to customers are on letterheads bearing the Chicago sales office address and are sometimes typed by A at home and sometimes dictated by him to a stenographer when he is in the Chicago sales office. Correspondence to A and his paychecks are sometimes picked up by A in Chicago and otherwise are forwarded by the sales office to his home. The duties which A performs at home are sufficient to make his home his base of operations. A's compensation is therefore not subject to withholding because his base of operations is in State X, and part of his service is performed in that state.
- C) A, a resident of Illinois, sells products in Illinois, State X and State Y for B corporation, which is located in State Z. A operates from his home, where he receives instructions from his employer, communications from his customers, etc. Once a year, A goes to State Z for a 10 day sales meeting. All of A's compensation is subject to withholding; the service is not localized in any state but part of the service is performed in Illinois and A's base of operations is his home in Illinois.
- D) A works for a company whose home office is in State X. He is a regional director working out of a branch office in Illinois. He works mostly in Illinois but spends considerable time in State X. A's base of operations is the branch office in Illinois. Since he performs some service in Illinois and his base of operations is in Illinois, it is immaterial that his source of direction and control is in State X. All of A's compensation for service is subject to withholding.
- E) A, a resident of Illinois, is a salesman for the B corporation, which has its main office in State X. A works out of the main office and his territory is divided equally between State X and Illinois. A's compensation is not subject to withholding because his base of operations is in State X, and part of his service is performed in that State.

F) A, an airplane pilot for B airline, lives in State X and regularly flies between Chicago and cities in other states. A does not have an office but reports to a flight operations office in Chicago which determines flight assignments for A and other pilots reporting to that office. A receives his paycheck and other company mail at the flight operations office in Chicago. A's base of operations is Illinois. He performs some service in Illinois and it is not "incidental" to service performed elsewhere. All of A's compensation for service is subject to withholding.

e) Place of direction or control

1) The permanent place from which the employee's service is directed or controlled is relevant in determining whether wages are subject to withholding if the localization tests are not applicable and it is impossible to determine the base of operation for such individual. In such a case, if both the place from which the individual's service is directed or controlled is within this State, and some of the service is performed within this State, then his entire compensation will be subject to withholding, but if not, none of his compensation will be subject to withholding. For example, a salesman's territory may be so indefinite and so widespread that he will not retain any fixed business office or address but will receive his orders or instructions by mail or wire wherever he may happen to be. In such case, the location of the permanent place from which direction and control is exercised must be determined.

2) The previous subsection may be illustrated by the following examples:

A) A, a resident of State X, is employed as a salesman by B, a corporation with its main office in State Y. B has a permanent branch office and sales supervisor in Cairo, Illinois. A was hired by the branch office and sells merchandise for B in Illinois and other neighboring states as directed by the branch office in telephone calls but he has no place which he uses as a base of operations. All of the compensation for service performed by A for B is subject to withholding because A's service is not localized in any of the states in which he operates and he has no base of operations, but part of his service is performed in Illinois and the place from which the service is directed is in Illinois.

B) A is a salesman residing in State X, who works for a concern whose factory and selling office is in Chicago, Illinois. A's territory covers five states, including Illinois. He does not report, start from or return to the Chicago office or from his residence in State X. State X is the territory of another salesman. A does not have a base of operations but would be subject to withholding since part of his service is performed in Illinois and the place from which the service is directed is in Illinois.

C) A, a contractor whose main office is in Illinois, is regularly engaged in road construction work in Illinois and State X. All operations are under direction of a general superintendent whose permanent office is in Illinois. Work in each state is directly supervised by field supervisors working

from temporary field offices located in each of the two states. Each field supervisor has the power to hire and fire personnel; however, all requests for manpower must be cleared through the Illinois office. Employees report for work at the field offices. Time cards are sent weekly to the main office in Illinois where the payrolls are prepared. A is hired by a field supervisor in State X; he regularly performs service in both Illinois and State X. In such case, neither the localization nor the base-of-operations test would apply, but A's compensation would be subject to withholding. Part of A's service is performed in Illinois and his service is regarded as controlled from Illinois because the permanent office from which basic direction and control emanates is the Illinois office.

f) When residence is important

1) Residence is a factor in determining whether compensation paid to an individual is subject to withholding only when his service is not localized within some state; he performs no service in the state in which he has his base of operations (if he has a base of operations); and he performs no service in the state from which his service is directed or controlled. In such case, if the individual is a resident of this State, and some of his service is performed within this State, his entire compensation will be subject to withholding. However, compensation paid to residents of a state with which Illinois has entered into a reciprocal agreement (see Section 100.7090) is exempt from withholding.

2) Residence is also important in determining the Illinois income tax obligations of certain employees of railroads, motor carriers and air carriers (see Section 100.2590 of this Part and subsection (b)).

3) Subsection (f)(1) may be illustrated by the following example:

A is a salesman employed by the B company located in State X. His services are directed and controlled from the State X office and he has no base of operations. A lives in Illinois but his territory includes State Y and State Z as well as Illinois. All of A's wages are subject to withholding because no part of his service is performed in the state (State X) in which the place from which his services are directed is located, but part of his service is performed in Illinois and his residence is in Illinois.

g) Deferred compensation

1) Under certain contractual unfunded deferred compensation agreements, payments are made by an employer to an employee for service rendered at an earlier date. In many such 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 any such deferred compensation agreement will be deemed to meet the tests set forth in subsection (a) for compensation paid in Illinois if paid to the individual while a

resident of this State. Conversely, payments made under such an agreement will be deemed not to be compensation paid in this State and 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(b)(l) notwithstanding the fact that such amounts will be deemed not to be compensation paid in Illinois for purposes of IITA Section 701 and will not be subject to withholding.

- 2) Subsection (g)(1) may be illustrated by the following example:

A is a corporate executive. On January 1, 1965, A entered into an agreement with B corporation under which he 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 26 Ill Reg. 1274, effective January 15, 2002)