

**Illinois Department of Revenue  
Regulations**

**Title 86 Part 100 Section 100.7030 Payments to Residents (IITA Section 701)**

**TITLE 86: REVENUE  
PART 100  
INCOME TAX**

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**Section 100.7030 Payments to Residents (IITA Section 701)**

- a) In general
  - 1) Any payment to an Illinois resident as an employee or otherwise by any payer maintaining an office or transacting business in this state shall be subject to withholding of Illinois income tax if such payments are subject to withholding of federal income tax. Any payer maintaining an office or transacting business in this state making such payments shall be considered an "employer" for purposes of IITA Article 7 and these regulations and, accordingly, will be subject to the same rules and procedures governing employers withholding tax on compensation paid in Illinois. For example, such payers will be required to register as withholding agents, and shall be subject to the reporting (and payment) requirements of IITA Sections 703 and 704. Also, such payers will be subject to the penalties prescribed in Article 10 of the Act.
  - 2) Payments to an Illinois resident by a payer transacting business or maintaining an office in Illinois on which federal withholding is required shall be considered "compensation paid in Illinois" for purposes of IITA Article 7 and the regulations thereunder. Illinois residents receiving such payments shall be considered "employees" for purposes of IITA Article 7 and the regulations thereunder. Thus, for example, the computation of the amount of tax to be deducted and withheld shall be made pursuant to Section 100.7050 and the payee shall be entitled to a withholding exemption pursuant to Section 100.7100 of this Part.
  - 3) Withholding shall be required on the first payment on which withholding of federal income tax is required and shall continue to be required in respect of all such payments until withholding of federal income tax on such payments terminates pursuant to the Internal Revenue Code and the regulations thereunder.
- b) Payments subject to federal withholding
  - 1) Withholding of Illinois income tax is required on all payments to

Illinois residents on which withholding of tax is required under the Internal Revenue Code. This applies not only to compensation but to any other type of payment on which federal withholding of income tax is required. Withholding shall be considered required under the Internal Revenue Code if the payee is authorized either by the Internal Revenue Code or the regulations thereunder to request withholding of federal income tax on a particular type of payment and the payee and payer have entered into an agreement for such withholding. No authorization from the payee for Illinois withholding is necessary in this situation; the requirement of federal withholding even though voluntarily elected shall automatically impose Illinois withholding.

- 2) Income tax withholding requirements on certain gambling winnings
  - A) General requirements. Under IITA Section 701(b) a payer of gambling winnings maintaining an office or transacting business in Illinois must withhold Illinois income tax from such winnings if the winnings are paid to an Illinois resident or to someone receiving them on behalf of an Illinois resident and if the winnings are subject to Federal income tax withholding.
  - B) Residents defined. The following are Illinois residents:
    - i) an individual who is in Illinois for other than a temporary or transitory purpose during the taxable year; or who is domiciled in Illinois but is absent from Illinois for a temporary or transitory purpose during the taxable year;
    - ii) the estate of a decedent who at his death was domiciled in Illinois;
    - iii) a trust created by a will of a decedent who at his death was domiciled in Illinois; and
    - iv) an irrevocable trust, the grantor of which was domiciled in Illinois at the time such trust became irrevocable (but not including "grantor trusts" under 26 USC 671 through 678).
  - C) Gambling winnings from which withholding is required. Illinois income tax withholding is required if the gambling winnings are paid to a resident of Illinois and are subject to federal income tax withholding requirements. For more specific information, and precise details regarding actual federal withholding requirements, see 26 USC 3402(q) and the instructions for U.S. Form 5754 available from the Internal Revenue Service.
  - D) Determination of winner's status as an Illinois resident – Form IL-5754. At the time the winnings are paid, Form IL-5754,

Statement by Person(s) Receiving Gambling Winnings, must be completed. The person (or persons) receiving the winnings must identify himself and any other winners by indicating name, address, state of residence, taxpayer identifying number and amount won. If the person receiving the winnings is unable to properly identify any of the winners, or the state of residence of any such other winner, the amount of the winnings applicable to such other person shall be considered as having been won by the person (or persons) properly identified. Form IL-5754 must be signed, under penalties of perjury, by the person (or persons) receiving the winnings. A copy of Form IL-5754 must be retained by the payer; it need not be submitted to the Department.

E) Withholding from residents. If any of the persons listed on Form IL-5754 has Illinois as his state of residence and Federal income tax withholding is required, the payer must withhold Illinois income tax at the rate of 3% from each such person's winnings except to the extent that any such person claims an exemption on Form IL-W-4G submitted to the payer prior to the payment. The payer must prepare a Form IL-W-2G for every winner from whose gambling winnings Illinois income tax is withheld and the completed Form IL-W-2G may be presented to the winner either at the time of payment of the winnings or at any time up to and including January 31 of the year following the year of payment. Regarding the exemption certificates (Forms IL-W-4G), one copy should be retained by the winner and two copies should be submitted to the payer, the payer then forwarding one copy to the Department of Revenue on or before the 15th day of the following month.

F) Filing and remittance obligations of the payers. Payers withholding Illinois income tax on gambling winnings are required to file returns and information statements and make remittances in accordance with the schedule established by IITA Section 704 (see Section 5 of the Illinois Withholding Guide – Form IL-700). Payment due dates will reflect the total amounts withheld under IITA Sections 701, 708, 709 and 710. For example, if, during a quarter-monthly period, an employer withholds \$400 from employee's wages, \$400 from gambling winnings paid to residents, and \$400 from certain payments made pursuant to a personal services contract under IITA Section 708, he must remit \$1,200 to the Illinois Department of Revenue by the third banking day following the close of that quarter-monthly period.

c) Exceptions

1) Withholding will not be required under this section on any payment to the extent such payment is not includable in the recipient's base

income. Thus, if a payment consists partially of a return of capital, only that part of the payment which is not a return of capital and hence, is income, would be subject to withholding. Also annuity payments from qualified employee benefit plans, which are not includable in Illinois base income under IITA Section 203(a)(2)(E), would not be subject to withholding under this section notwithstanding an agreement between the payor and the payee for the withholding of federal income tax on such payments. Similarly, if a payment consists of an amount which is exempt from taxation by this State either by reason of its Constitution or by reason of the Constitution, treaties or statutes of the United States (i.e., interest on obligations of the United States) such payment would not be subject to withholding under this section.

- 2) Withholding will not be required on any payment under this section, except "compensation paid in Illinois" as defined in Section 100.7010 (a) of this Part to the extent that the payment is subjected to withholding by another state. A signed declaration by the payee to the effect that another state is withholding income tax on a payment shall relieve the payer of the requirement to withhold Illinois tax on such payment.

(Source: Amended at 24 Ill. Reg. 10593, effective July 7, 2000)