

General Information Letter: Illinois residents are exempt from Wisconsin income tax on employee wages, and so are not allowed a credit for taxes paid to Wisconsin on wages.

August 17, 2010

Dear:

Your 2008 Illinois income tax return, with related correspondence, has been forwarded to me for consideration. The nature of your correspondence and the information in the file require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 86 Ill. Adm. Code 1200.120(b) and (c), which may be found on the Department's web site at [www. tax.illinois.gov](http://www.tax.illinois.gov).

The file and correspondence include the following documents:

- A joint 2008 Illinois income tax return on Form IL-1040, to which is attached a Schedule ICR on which you claim a credit for Illinois property taxes paid on your principal residence and a Schedule CR on which you claim a credit for taxes paid to Wisconsin on \$62,683 in income that was taxed by both Illinois and Wisconsin.
- A joint 2008 Wisconsin income tax return on Form 1NPR, on which you report that you are residents of Illinois and were not residents of Wisconsin for any part of that year. The return also reports \$66,799 in total wages for the year, and reports all of those wages as Wisconsin sourced. The return reports a Wisconsin income tax liability of \$3,313.

The Department disallowed the credit claimed on the Schedule CR for taxes paid to Wisconsin. In your correspondence, you assert that you properly reported and paid Wisconsin income tax on your Wisconsin-sourced income as nonresidents of Wisconsin, and that the credit claimed on the Schedule CR should be allowed.

Response

Under the Illinois Income Tax Act, a resident of Illinois is taxable on income earned in Wisconsin. Specifically, Section 301(a) of the Illinois Income Tax Act (35 ILCS 5/301) provides:

All items of income or deduction which were taken into account in the computation of base income for the taxable year by a resident shall be allocated to this State.

Under Section 203(a) of the Illinois Income Tax Act (35 ILCS 5/203), "base income" is the amount reported on Line 9 of the Form IL-1040, and is equal to the individual's "adjusted gross income" as properly reported on his or her federal income tax return and on Line 1 of the Form IL-1040, after taking into account the modifications reported on Lines 2 through 8.

In order to prevent an Illinois resident from paying state income tax twice on the same income, Section 601(b)(3) of the Illinois Income Tax Act (35 ILCS 5/601) allows a credit for taxes paid to another state on income taxed by both that state and by Illinois.

Section 302(b) of the Illinois Income Tax Act (35 ILCS 5/302) provides:

The Director may enter into an agreement with the taxing authorities of any state which imposes a tax on or measured by income to provide that compensation paid in such

state to residents of this State shall be exempt from such tax; in such case, any compensation paid in this State to residents of such state shall not be allocated to this State.

Under that authority, the States of Illinois and Wisconsin entered a "reciprocal agreement" effective January 1, 1974, pursuant to which neither state taxes, or requires withholding from, wages earned in the state by a resident of the other state.

The instructions to the Schedule CR expressly provide:

If you earned wages, salaries, tips, or other employee compensation from an employer in Iowa, Kentucky, Michigan, or Wisconsin while you were a resident of Illinois, you are covered by a reciprocal agreement between that state and Illinois and are not taxed by that state on your compensation. However, you may be taxed on other income.

If your employer withheld taxes or you paid tax to these states on your compensation, you must claim a refund from that state. You **may not** claim a credit on Schedule CR for that tax. You must file the appropriate forms with that state to receive a refund of taxes withheld in error

See also the enclosed copy of the Wisconsin Form W-220, Nonresident Employee's Withholding Reciprocity Declaration. This is the form an Illinois resident uses to inform his or her employer that no Wisconsin income tax should be withheld from his or her wages pursuant to the reciprocal agreement between the two states. Note that the last sentence informs the employee that, if Wisconsin income tax was withheld, the employee must file a Wisconsin return and claim a refund of the amounts withheld.

Accordingly, you are not allowed a credit against your Illinois income tax liability for taxes paid to Wisconsin on wages earned during 2008 because you were Illinois residents for the entire year. If Wisconsin taxes were withheld from your wages, you must file a refund claim with Wisconsin. You may claim a credit on Schedule CR only for taxes paid to Wisconsin on your non-wage income taxable by that State.

As stated above, this is a general information letter 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 are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b). If you have any further questions, you may contact me at (217) 782-7055.

Sincerely,

Paul S. Caselton
Deputy General Counsel – Income Tax