

General Information Letter: Wages paid to a temporary employee whose services are performed entirely within Illinois are "paid in this State" under IITA Section 304(a)(2)(B).

November 29, 2011

Dear:

This is in response to your letter dated September 12, 2011 in which you state the following:

Currently, we have a temporary employee in a fabrication shop in Illinois. He is inspecting coating for a pipeline. The duration of his tenure will total approximately two to three (3) months. To date, COMPANY has withheld income tax for the past five (5) weeks. We are in the process of trying to determine whether COMPANY should be withholding such taxes.

We have spoken with agents at the Department of Revenue, who have told us that based on the circumstances; they do not believe COMPANY should be withholding income taxes for the inspector. They base this on the fact that COMPANY is localized in STATE1 and the inspector is from STATE2. Additionally, the inspector is being supervised, directed and controlled by COMPANYS' client, CLIENT, here in CITY, STATE1. The agents at the Department of Revenue recommended I write the legal department to get a determination as to the question whether COMPANY should be withholding. Based on my review of Publication 130, the question is a matter of degree and the determination is where the line of significance is drawn.

Any assistance with this matter would be appreciated. In the event COMPANY is not required to withhold, we request the amount paid to date for withholding be returned.

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.tax.illinois.gov/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.

According to Section 302(a) of the Illinois Income Tax Act ("IITA;" 35 ILCS 5/101 et seq.), "[a]ll 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 allocated to this State."

Section 1501(a)(3) of the IITA defines "compensation" as "wages, salaries, commissions and any other form of remuneration paid to employees for personal services." Furthermore, Section 304(a)(2)(B) describes when compensation is considered to be "paid in this State." Section 304(a)(2)(B) states the following:

- (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.

According to your letter, a temporary nonresident employee will be inspecting coating for a pipeline in a fabrication shop located in Illinois for two or three months. It appears from your letter that the employee's work is performed entirely within Illinois during these few months and as such, it is "compensation paid in this State" for purposes of the IITA.

IITA Section 701(a) states that "[e]very employer maintaining an office or *transacting business* in this State and required under the provisions of the Internal Revenue Code to withhold a tax on: (1) compensation paid in this State (as determined under Section 304(a)(2)(B) to an individual; or (2) [language applicable to payments made to Illinois residents only].

Based on the facts you provided and the statutory language cited above, COMPANY is required to withhold taxes from employee wages for work performed in Illinois. 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  
Associate Counsel -- Income Tax