

General Information Letter: Compensation paid in this State to a nonresident is taxable by Illinois.

March 14, 2012

Dear:

This is in response to your letter postmarked March 9, 2012, in which you request a letter ruling. The nature of your request and the information you have provided 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).

In your letter you have stated the following:

I am a non-resident (I live in Minnesota) attempting to file my taxes. I have been in contact with Ms. Z, someone working in the Department of Revenue customer service. She was helpful, and recommended that I contact someone in legal services regarding an issue I have as I file state taxes.

Like I said, I live in Minnesota, but I work, and earn 100% of my income from an Illinois source. I am writing you to question that policy that is in effect disallowing non-residents from using line 16 of the IL-1040. By completing this line, I would be able to pay taxes to Minnesota, and receive the income that was withheld from my checks by Illinois.

Please correct me if I am wrong, but from what I gather, the way the laws stand, I must pay 100% of my taxes to Illinois, and use a mechanism similar to IL line 16 to avoid paying Minnesota. So short of paying two states, I do not see how it would be possible for me to pay the state in which I live.

Because I live in Minnesota, and I use services (libraries, schools, parks and civic centers) in my home state, I feel obligated to pay taxes to Minnesota. I cannot understand why such a policy is in place, anyways. I do not utilize such publically funded services in Illinois, and therefore do not feel obligated to pay taxes in this location.

Please let me know with whom I need to get in contact in order to change this tax policy. Alternatively, please let me know if there is an option or potential exception to the line 16 rule (than an NR are unable to use it).

## **Response**

The Illinois income tax is computed on the taxpayer's "net income," which is defined in Section 202 of the Illinois Income Tax Act (35 ILCS 5/202) as "that portion of his base income for such year which is allocable to this State under the provisions of Article 3, less the standard exemption allowed by Section 204." In Article 3 of the Illinois Income Tax Act, Section 301(a) (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.

For nonresidents, Section 301(c) provides that:

Any item of income or deduction which was taken into account in the computation of base income for the taxable year by any person other than a resident and which is referred to in Section 302, 303 or 304 (relating to compensation, nonbusiness income and business income, respectively) shall be allocated to this State only to the extent provided by such section.

Section 302 (35 ILCS 5/302) basically provides that compensation earned by an employee working in Illinois is allocated to Illinois.

To the best of my knowledge, every state that imposes income tax on individuals follows a similar pattern: residents are taxed on income regardless of geographic source, while nonresidents are taxed only on income from sources within the taxing state. Because this pattern would cause an individual receiving income from a source outside his or her state of residency to be taxed twice on that income, Section 601(b)(3) of the Illinois Income Tax Act (35 ILCS 5/601) allows residents a credit for taxes paid to other states on income from sources outside Illinois. Again, to the best of my knowledge, every other state that imposes income tax on individuals has a similar credit. Minnesota does, and allows the credit on Line 17 of the 2011 Form M1. As noted on the Schedule M1CR, this credit is available only to Minnesota residents.

Changing the law would require an act of the Illinois General Assembly.

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