

General Information Letter: Deferred compensation received for employee services performed entirely within Illinois are taxable by Illinois.

Dear:

This is in response to your letter dated October 29, 2012 in which you request information regarding the taxation of certain compensation. The nature of your request and the information you have provided require that we respond with a General Information Letter (GIL). A GIL 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 accessed at www.revenue.state.il.us.

In your letter you have stated the following:

In 19XX while a resident of STATE I was employed as an actor in a movie (MOVIE) shot in Illinois by COMPANY. I paid IL state taxes for the income I earned in IL in 19XX. Since that time COMPANY has continued to withhold and pay IL taxes from the residuals I have earned from said movie. I understand paying IL taxes for the income while working in Illinois, but the money I make from residuals is from sources all over the world. This cannot be right. According to that logic, any band, for example, that recorded an album in IL would owe IL taxes on 100% of the worldwide royalties from that album even though they are not and never have been a resident of IL. The same could be said for nonresident authors who have their books printed in IL.

Could you please send me a letter that would enable me to clear this issue up with COMPANY?

RULING

Based on the information contained in your letter, it appears that COMPANY is properly withholding Illinois income tax. Your letter states that the residual income is reported to you on federal Form W-2, which indicates that such income is considered for federal income tax purposes to be compensation for personal services. Pursuant to Section 102 of the Illinois Income Tax Act ("IITA"; 35 ILCS 5/102), the same characterization applies for Illinois income tax purposes. Section 102 states:

Except as otherwise expressly provided or clearly appearing from the context, any term used in this Act shall have the same meaning as when used in a comparable context in the United States Internal Revenue Code of 1954 or any successor law or laws relating to federal income taxes and other provisions of the statutes of the United States relating to federal income taxes as such Code, laws and statutes are in effect for the taxable year.

Under IITA Section 701(a), Illinois withholding is required in respect of any item of "compensation paid in this State" as to which federal withholding is required. IITA Section 302(a) states:

All 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.

IITA Section 304(a)(2)(B) states:

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.

Department Regulations Section 100.3120(b) (86 Ill. Adm. Code 100.3120(b)) provides rules for determining whether compensation paid for past service is considered compensation paid in Illinois. The Section states, in part, as follows:

Where compensation is paid to a nonresident for past service, such compensation will, for the purpose of determining whether and to what extent such compensation is "paid in" Illinois and is allocated to Illinois under IITA Section 302(a), be presumed to have been earned ratably over the employee's last 5 years of service with the employer (or any predecessor or successor of the employer or a parent or subsidiary corporation of the employer), in the absence of clear and convincing evidence that such compensation is properly attributable to a different period of employment or that it was not earned ratably over the appropriate period of employment. Compensation earned in each past year will be deemed compensation paid in Illinois if the individual's service in such year met the tests set forth in subsection (a) above.

In this case, the compensation paid to you for your past service as an actor in a movie filmed in Illinois would clearly be allocable to Illinois under IITA Section 304(a)(2)(B)(i). Accordingly, it appears that COMPANY is properly withholding Illinois tax.

As stated above, this is a GIL 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 one through eight of 86 Ill. Adm. Code 1200.110(b). If you have additional questions regarding this GIL, you may contact me at (217) 782-7055.

Sincerely,

Brian L. Stocker
Associate Counsel (Income Tax)