

IT 13-0014-GIL 11/4/2013 Credit Foreign Tax

Gambling winnings are sourced to the state of residence of the individual winner, so are not included in the computation of the cap on the credit allowed under IITA Section 601 (b)(3).

November 4, 2013

Re: Credit for Taxes Paid on Gambling Winnings

Dear XXXX:

This is in response to your letter dated October 30, 2013, 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:

Taxpayer received a Return Correction Notice which states "If you were an Illinois resident when the gambling winnings were earned, you must pay Illinois income tax on gambling winnings. You may not take a credit for income tax paid to another state." This has the result of the taxpayer paying tax to the state where the winnings were received and also paying tax to Illinois on the same winnings.

Please tell me where I can find this ruling in the statute or how this reasoning was derived. Also I would like to know when this decision was made.

The instructions to Form CR state "Schedule CR . . . allows you to take a credit for income taxes you paid to other states on income you received while a resident of Illinois." We assume this means "income" of any kind.

We were told by an agent that the credit only applies to "earned income" and not to gambling winnings. The instructions do not make that distinction. Also the Return Correction Notice state: "the gambling winnings were earned" which adds to the confusion.

Response

Section 601(b)(3) of the Illinois Income Tax Act (35 ILCS 5/601) allows residents to claim a credit for income taxes paid to other states. That section also provides:

For taxable years ending on or after December 31, 2009, the credit provided under this paragraph for tax paid to other states shall not exceed

that amount which bears the same ratio to the tax imposed by . . . this Act as the amount of the taxpayer's base income that would be allocated or apportioned to other states if all other states had adopted the provisions in Article 3 of this Act bears to the taxpayer's total base income subject to tax by this State for the taxable year.

The Schedule CR, Credit for Tax Paid to Other States, implements this limitation by having the taxpayer list items of income from all sources in Column A of Lines 1 through 39, and write the amount that is sourced to other states using Illinois' sourcing rules in Article 3 of the Illinois Income Tax Act in Column B of each line, then writing the total income and total non-Illinois sourced income on Line 42, and computing the fraction of income that is from non-Illinois sources on Line 43. This fraction, multiplied by the taxpayer's Illinois income tax liability before credits, yields the limit on the credit allowed for taxes paid to other states.

In Article 3 of the Illinois Income Tax Act, Section 301(c)(2) (35 ILCS 5/302) provides:

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 not otherwise specifically allocated or apportioned pursuant to Section 302, 303 or 304 . . . in the case of an individual, trust or estate, shall not be allocated to this State.

Except in the case of a professional gambler, who would apportion his or her gambling winnings as business income under the provisions of Section 304 of the Illinois Income Tax Act (35 ILCS 5/304), there is no provision in Sections 302, 303 or 304 that would allocate gambling winnings of a nonresident to Illinois. Thus, if all states used Illinois' rules for sourcing income, no other state would tax gambling winnings of a nonresident gambler who is not a professional. Accordingly, pursuant to the provision in Section 601(b)(3) quoted above, there is no provision in the instructions to the Schedule CR that allows gambling winnings of a nonprofessional gambler to be included in Column B of any line. For the vast majority of residents who are taxed by another state only on gambling winnings, this means that the total income sourced to other states under Illinois' rules is zero, and the credit allowed under Section 601(b)(3) is zero.

Legislation that would change this result by providing that gambling winnings from Illinois gambling venues are sourced to Illinois under a new subsection (e-1) of Section 303 of the Illinois Income Tax Act has been introduced this year as Senate Bill 1729. However, that bill would change the law only for 2013 and future years.

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