

IT 15-0001 GIL 2/24/2015 Subtraction Modifications – Military

Personal service income earned by a nonresident who is in Illinois only because the nonresident's spouse is a member of the military stationed in this State is exempt from Illinois income tax by the Servicemembers Civil Relief Act. (This is a GIL.)

February 24, 2015

Re: Illinois income tax

Dear Mr. XXXX:

This is in response to your letter received by this office January 8, 2015. The nature of your letter and the information 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 from the Department's web site at www.Iltax.com.

Your letter states as follows:

It has come to my attention that the wording in IL Dept. Rev Publication 102 is unclear as to how a military spouse should report their civilian wages. On page 3 of 4 from Pub 102 it states that under the Military Spouse Residency Relief Act, effective for tax years 2009 and after:

If you are a nonresident spouse of a service member, you and your service member spouse have the same domicile, and you are in Illinois only to accompany your spouse on his or her military assignment, your employee wages earned in Illinois are not taxable by Illinois.

Please clarify if this includes income from self-employment. Currently, after I reviewed a prospective client's 2013 federal and Illinois tax return and seeing how the spouse may be taxed on this income, prompted my writing to your department for a letter ruling since the Pub 102 is not clear.

Note: The self-employment income is from providing child care services in their apartment on base at BASE. See the enclosed sample Illinois return I prepared. If your ruling is that it is not taxable income to the military spouse...then where on the IL Schedule NR should this be subtracted. Perhaps line 44 of the Schedule NR? Also, they are residents of STATE on assignment in Illinois

RULING

Section 571(c) of the Servicemembers Civil Relief Act (Relief Act), 50 USCA App 571, states:

Income for services performed by the spouse of a servicemember shall not be deemed to be income for services performed or from sources within a tax jurisdiction of the United States if the spouse is not a resident or domiciliary of the jurisdiction in which the income is earned because the spouse is in the jurisdiction solely to be with the servicemember serving in compliance with military orders.

The above provision is not limited to wage income, but may extend to the self-employment income of a servicemember's spouse to the extent such income derives from services performed by the servicemember's spouse. Therefore, provided the other requirements of Section 571(c) of the Relief Act are satisfied, the income referenced in your letter is not subject to Illinois income tax. Assuming the facts as provided in your letter and sample return are true, the taxpayers are not required to file an Illinois income tax return for the 2013 tax year because they have no Illinois income tax liability for such year.

As stated above, this is a GIL. A GIL does not constitute a statement of policy that applies, interprets or prescribes the tax laws, and it is not binding on the Department.

Sincerely,

Brian L. Stocker
Associate Counsel (Income Tax)