

IT 15-0016-GIL 10/29/2015 COMPENSATION

Compensation of an employee who performs significant services within and without the State, and whose base of operations is in another state in which services are performed, is allocated to the state in which the base of operations is located.

October 29, 2015

Re: Illinois Income Tax

Dear Xxxxx:

This is in response to your letter dated October 8, 2015 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](http://www.revenue.state.il.us).

In your letter you have stated the following:

I am writing for clarification of Illinois tax law regarding wages taxed in Illinois earned by a non-resident taxpayer.

Taxpayer lives and works in STATE and is employed by a Firm located in Illinois. The taxpayer's base of operations is her home. She is the TITLE. In this role she is responsible for developing sales from financial advisors in the GEOGRAPHIC area of the country. On a weekly basis, she typically spends 3-4 days traveling in the territory meeting with advisors to educate them on how to best position their client's portfolios using the Firm's mutual funds and separately managed accounts.

Based on these facts, I would assume that her wages are not considered compensation paid in IL according to IITA Section 304(a)(2)(B) since the services performed for the Firm are done entirely outside of IL.

However, she does attend meetings in her employer's office in IL, about 6 to 10 days per year. Do these days constitute services performed in IL? Will these days be subject to IL tax? Will these days cause all of her compensation to be considered compensation paid in IL?

**RULING**

Section 304(a)(2)(B) of the Illinois Income Tax Act ("IITA" ; 35 ILCS 5/304(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.

In applying IITA Section 304(a)(2)(B), Department Regulations § 100.7010(a)(3) (86 Ill. Adm. Code 100.7010(a)(3)) states that the rules set forth therein "are to be applied in such manner that, if they were in effect in other states, an item of compensation would constitute 'compensation paid in' only one state. Thus, if an item would, under these rules, constitute compensation paid in a state other than Illinois because the individual's service was localized in such other state under the tests of [section 304(a)(2)(B)], it could not also be compensation paid in Illinois." In addition, Department Regulations § 100.7010(c)(1) states that if compensation is paid in Illinois because the service is localized in Illinois under either Section 304(a)(2)(B)(i) or (ii), the factors set forth in Section 304(a)(2)(B)(iii) are not considered. Therefore, in order to determine whether compensation of a nonresident employee is taxable in Illinois, it must first be determined whether the employee's services are localized in Illinois or another state. Where the services are localized in Illinois the compensation is allocated to Illinois, and where the services are localized in another state the compensation is not allocated to Illinois. If, on the other hand, the employee's services are not localized in any state under the tests set forth in Section 304(a)(2)(B)(i) or (ii), then whether or not the compensation is taxable in Illinois depends upon the location of the employee's base of operations or the place from which the employee is directed or controlled as set forth under Section 304(a)(2)(B)(iii).

In this case, the facts set forth in your letter suggest that the employee's services are not localized in any state. Your letter indicates that the employee is the manager of the GEOGRAPHIC territory of the United States and typically spends 3-4 days each week traveling that territory. In addition, the employee spends 6-10 days of each year at meetings at her employer's office in Illinois. Department Regulations § 100.7010(c)(2) states that for purposes of determining whether services performed in one state are incidental to services performed in another, the term "incidental" refers to any service which is necessary to or supportive of the primary service performed by the employee or which is temporary or transitory in nature or consists of isolated transactions. In addition, Regulations § 100.7010(c)(3) states that the amount of time spent or the amount of services performed in a state is not decisive in itself of the question whether services in a state are incidental to services in another state.

Department Regulations § 100.7010(d)(1) states:

The localization tests are not applicable where an individual's employment normally or continually includes service within this State and also services without the State which are not "incidental" to the services performed within this State. In such case, if the individual's base of operations is within this State, his entire compensation will be [taxable], but if his base of operations is without this State, none of his compensation will be [taxable].

Regarding an employee's base of operations, Regulations § 100.7010(d)(2) states:

The term "base of operations" refers to the place or fixed center from which the individual works. An individual's base of operations may be his business office (which may be maintained in his home), or his contract of employment may specify a place at which the employee is to receive his directions and instructions. In the absence of more controlling factors, an individual's base of operations may be the place to which he has his business mail, supplies, and equipment sent or the place where he maintains his business records.

In this case, you have indicated that the employee's base of operations is her home in STATE. Therefore, none of the employee's compensation is allocated to Illinois.

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 wish to obtain a PLR which will bind the Department, please submit a request conforming to the requirements of 2 Ill. Adm. Code § 1200.110(b).

Sincerely,

Brian L. Stocker  
Associate Counsel (Income Tax)