

Base income includes payments under Public Employee Disability Act only if included in Federal AGI. (This is a GIL)

January 12, 2017

Dear Xxxxx:

This is in response to your letter dated December 23, 2016, in which you requested 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).

Your letter states as follows:

Please consider this correspondence a request for a Private Letter Ruling pursuant to Section 1200.110 of the Illinois Administrative Code. This request for a private letter ruling is made on behalf of the CITY, Illinois. Prior to issuing a ruling, please advise if this request requires a fee, and if so the amount of that fee. Additionally, if for any reason this Department declines to issue a private letter ruling pursuant to Section 1200.100, the CITY respectfully requests that a general information letter be issued in accordance with Section 1200.120. Please advise if there is a fee associated with a general information letter, if necessary.

This request for a private letter ruling is in regards to whether, pursuant to Illinois state income tax, benefits received under the Public Employee Disability Act, 5 ILCS 345/1/(b), is subject to income tax withholding.

1. Statement of Facts:

The CITY is a governmental employer who employs a variety of positions, including firefighters and police officers. A portion of the City's employees may collect benefits pursuant to the Public Employee Disability Act when they are injured in the scope of their employment. The pertinent issue is whether those benefits collected under the Public Employee Disability Act are considered taxable income thereby requiring that income tax be withheld from payments received by the employee. Pursuant to the Illinois Public Employee Disability Act (hereinafter referred to as "PEDA"), the pertinent section is Section 1b, which states:

Whenever an eligible employee suffers an injury in the line of duty which causes him to be unable to perform his duties, he shall continue to be paid by the employing public entity on the same basis as he was paid before the injury, with no deduction from his sick leave credits, compensatory time for overtime accumulations or vacation, or service credits in public employee pension fund during the time he is unable

to perform his duties due to the result of the injury, but no longer than one year in relation to the same injury. 5 ILCS 345/1(b)

The CITY had been paying eligible employees pursuant to PEDA on the same basis as they were paid before the injury, meaning withholding Illinois state income tax and reflecting the amount withheld on the applicable W2.

2. There are no contracts, licenses, agreement, instruments or other documents relevant to this request.
3. The tax period at issue is 2015 to 2016. There is no pending audit or litigation.
4. To the best of the CITY and its representative, pursuant to the power of attorney submitted, the Department has not previously ruled on the same or a similar issue for the tax payer or a predecessor. Additionally, to the best of the CITY and its representative's knowledge, pursuant to the power of attorney submitted, the CITY has not previously submitted the same or a similar issue to the Department but withdrew it before a letter ruling was issued.
5. Statement of authorities supporting taxpayer's view:
The authority supporting the CITY'S view on the taxability of PEDA benefits is the plain language of the statute. The CITY'S representative could not find any Illinois authority addressing this issue. As stated above, the statute provides that:

Whenever an eligible employee suffers an injury in the line of duty which causes him to be unable to perform his duties, he shall **continue to be paid by the employing public entity on the same basis as he was paid before the injury, with no deduction from his sick leave credits, compensatory time for overtime accumulations or vacation, or service credits** in public employee pension fund during the time he is unable to perform his duties due to the result of the injury, but no longer than one year in relation to the same injury. 5 ILCS 345/1(b) (emphasis added)

The language of the statute dictates how benefits are to be paid pursuant to the statute. First, the statute notes that the employee should be paid **“on the same basis as he was paid before the injury.”** This would indicate that on the same basis as he was paid before would include the withholding of income tax, particularly state income tax. The statute goes on to have a specific list regarding what should not be deducted, including no deduction from sick leave credits, compensatory time for overtime accumulations or vacations, or service credits in a public employee pension fund. Given that there is a specific list on what should not be deducted from the pay, this implies a conscious decision on the part of the legislature which does not state that there should be no deduction of income tax. Additionally, allowing employees receiving PEDA benefits to have an exception from income tax would provide the employee with a windfall which would result in non-injured employees being treated differently than those employees receiving PEDA benefits. Lastly, providing a windfall to an employee does not provide an incentive to return to work as they would be receiving more income than if they were working. Therefore, using

the plain language of the statute along with the implications of the interpretation of the statute, there should be tax withheld from those Public Employee Disability Act benefits which are paid.

6. Statement of authorities contrary to the taxpayer's view:

The CITY's representative could not find any Illinois authority addressing this issue. However, the Illinois Worker's Compensation Act could be construed to be a contrary authority, though notably the Workers' compensation Act is separate and distinct Act from the Public Employee Disability Act.

Pursuant to the Worker's Compensation Act, and injured employee receives a percentage of their income for temporary total disability. Temporary total disability payments are calculated using the injured employee's average weekly wage multiplied 66 and 2/3. Benefits received pursuant to TTD are not subject to income tax. See 820 ILCS 305/1 et. al.

An analogous interpretation could be made to the Workers' Compensation Act in which Public Employee Disability benefits are also not subject to a deduction in Illinois State income tax, despite PEDA benefits being paid at full salary while TTD benefits pursuant to the Workers' Compensation Act are paid at a percentage of the injured employee's average weekly wage.

7. There is no specific trade secret information that the taxpayer requests to be deleted from the publically disseminated version of the private letter ruling.

Thank you for your time and attention to this request. Please do not hesitate to contact me should you require any additional information.

RULING

Section 201(a) of the Illinois Income Tax Act ("IITA"; 35 ILCS 5/201) imposes a tax, measured by "net income," upon every individual, corporation, trust and estate for the privilege of earning or receiving income in or as a resident of the State. IITA section 202 defines "net income" in the case of an individual as that portion of the taxpayer's "base income" allocable to Illinois under the provisions of Article 3, less the standard exemption allowed under section 204. In the case of an individual, IITA section 203(a) defines the term "base income" to equal the taxpayer's adjusted gross income (AGI) for federal income tax purposes, as modified by certain statutorily prescribed addition and subtraction modification. Therefore, absent a modification any item of income that is included or excluded in the computation of a taxpayer's federal (AGI) is likewise included or excluded in the computation of the taxpayer's Illinois base income.

In the present case, whether amounts received by city employees pursuant to the Public Employee Disability Act are included in the employee's Illinois base income depends on whether the same amounts must be included in the employee's federal AGI. If such amounts must be included in federal AGI, they must also be included in Illinois base income. If the amounts are excluded from federal AGI (for example, under 26 U.S.C 104(a) and 26 C.F.R. §1.104-1(b)), then the same are excluded from Illinois base income.

Section 701(a) of the IITA requires every employer maintaining an office or transacting business in Illinois to withhold Illinois income tax on compensation paid in the State. Regarding this provision, Department Regulations section 100.7000(a) states that Illinois income tax is not

required to be withheld on any compensation paid in this State of a character which is not subject to federal income tax withholding (whether or not such compensation is subject to withholding for federal taxes other than income tax, e.g., F.I.C.A. (Social Security taxes). Section 701(b) of the IITA state that any payment to an Illinois resident by a payor maintaining an office or transacting business in Illinois and on which federal income tax withholding is required, shall be deemed compensation paid in this State for purposes of Section 701(a) to the extent such payment is included in the recipient's base income and is not subject to withholding by another state.

In the present case, Illinois withholding is required with respect amounts received by city employees pursuant to the Public Employee Disability Act only if such amounts are included in base income, subject to federal income tax withholding, and constitute compensation paid in this State under the provisions of IITA Section 701(a) or (b).

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) 782-2844.

Sincerely,

Brian L. Stocker
Associate Counsel (Income Tax)