

Place where service is directed or controlled. (This is a GIL).

September 17, 2018

Re: withholding by interstate trucking companies

Dear Xxxxx:

This is in response to your letter dated July 16, 2018, in which you request information regarding withholding by interstate trucking companies. 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.

Your letter states as follows:

We would like to request a General Information Letter for a Withholding issue which many of our clients face. We work with interstate trucking companies who transport goods across state lines. They[sic] hire W2 workers from all over the United States. Below is the example of the issue we face and the reason for the request.

Our client is an Illinois company that hires a driver that lives in Arizona, Driver performs the service across interstate lines, and his loads usually originate near his home town and he returns back to his home town. His only contact with Illinois is that he is being dispatched from this state. The accountant for the driver claims that there should be no Illinois deduction, since the driver has nothing to do with Illinois. He effectively earns his income across state line and should therefore pay only to the state he lives in. We have provided Publication 130 as explanation. However, the confusion comes from the limited exception for employers that fall under Surface Transportation Board jurisdiction. It specifically lists that certain trucking companies fall under this exception, but it fails to define what is meant by "certain trucking companies." Do interstate trucking companies fall under the exception, and should the company withhold Illinois taxes for interstate drivers, or are they exempt under the STB jurisdiction?

Please, let us know if you need any further details on this matter, and what is the proper information we should provide to our clients.

RULING

Department Regulation 100.3120(a)(1) provides as follows:

In order for items of compensation paid to an individual who is a nonresident of Illinois at the time of payment to be allocated to Illinois, such compensation must constitute "compensation paid in this State". If the test is met, then all items of such compensation, and all items of deduction directly allocable thereto, are allocated to Illinois under IITA Section 302(a) (except items allocated under IITA Section 301(b)(2), as to which see subsection (c) below). Compensation paid to a nonresident, which is allocated to Illinois

, enters into the computation of such individual's net income under IITA Section 202 and is generally subject to withholding under IITA Section 701 (see Sections 100.7000, 100.7010 and 100.7020). The tests for determining whether compensation is paid in Illinois appear in IITA Section 304(a)(2)(B) and are substantially the same as those used to define "employment" in the Illinois Unemployment Compensation Act [820 ILCS 405] (and similar unemployment compensation acts of other states). Compensation is paid in Illinois if:

A) The individual's service is localized in Illinois because it is performed entirely within Illinois;

B) The individual's service is localized in Illinois although it is performed both within and without Illinois, because the service performed without Illinois is incidental to the individual's service performed within Illinois; or

C) The individual's service is not localized in any state but some of the service is performed within Illinois and either:

i) the base of operations, or if there is no base of operations, the place from which the service is directed or controlled is within Illinois, or

ii) 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 Illinois.

Based on your description, subparagraph (C) would apply. If some of the service is performed in Illinois, and that service is directed or controlled from Illinois, then the compensation is considered paid in Illinois, and Illinois withholding would be required. If, however, the service is not directed or controlled from any state where a portion of the service is provided, then the compensation is not paid in Illinois unless the employee is an Illinois resident.

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 regarding this letter, you may contact me at (312) 814-1722.

Sincerely,

Brian E. Fliflet
Deputy General Counsel, Income Tax