

Deferred compensation is "paid in this State" to the extent paid for services for which the ordinary compensation was "paid in this State." (This is a GIL.)

June 24, 2019

Re: Illinois income tax

Dear Xxx:

This is in response to your letter received April 19, 2019, in which you request information regarding Illinois income tax. 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:

I'm writing on the advice of the IL Tax Preparer Hotline for clarification of a tax issue.

My client is a retired, fulltime STATE resident who will continue to receive RSU and DCP income from STATE that COMPANY, the company he retired from, says should be taxable to STATE even though he is no longer an STATE resident. Should either of these forms of income be taxable to STATE, where he earned the right to the income, or to STATE, his current and future state of residency?

I researched your web site and found information in Title 86, Section 100.3120, b 1 but it didn't seem conclusive. Three different employees at these two tax help numbers (#### and ####) said they were unclear and couldn't offer a definitive answer.

In my experience, pensions are taxable to the state of the recipient's residence (if that state taxes pensions). NAME is my only retired STATE client and I've only prepared returns for a few STATE residents in the past. Hope you are able to help.

I've attached the IL-2848, along with the emailed acknowledgement that it is now on file.

### **RULING**

Regarding the allocation of compensation paid to nonresidents for Illinois income tax purposes, Section 302(a) of the Illinois Income Tax Act ("IITA"; 35 ILCS 5/101 et seq.) states in part:

All items of compensation paid in this State (as determined under Section 304(a)(2)(B)) to an individual who is a nonresident at the time of such payment [...] shall be allocated to this State.

IITA Section 1501(a)(3) defines the term "compensation" to mean wages, salaries, commissions and any other form of remuneration paid to employees for personal services. The Illinois Administrative Code further describes the statutory definition of compensation in 86 Ill. Adm. Code 100.3100(c):

The name by which remuneration for services is designated is immaterial. Thus, salaries, fees, bonuses, commissions on sales or on insurance premiums, **and pensions and retired pay are compensation** within the meaning of the statute if paid for services performed by an employee for his employer.

(emphasis added).

86 Ill. Adm. Code 100.3100(d) states:

Remuneration for personal services constitutes compensation even though at the time paid the relationship of employer and employee no longer exists between the person in whose employ the services were performed and the individual who performed them, so long as such relationship existed when the services were rendered.

Pursuant to these provisions, restricted stock units (“RSU”) and deferred compensation plans (“DCP”) must generally be considered “compensation” for purposes of the IITA. As such, the RSU and DCP pay is taxable in Illinois if “paid in this State” under IITA Section 302(a).

86 Ill. Adm. Code 100.3120(a)(1) states that 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.

86 Ill. Adm. Code 100.3120(b) provides specifically as to whether compensation paid for past service shall be considered paid in Illinois.

[...]Where compensation is paid to a nonresident for past service, such compensation will, for the purpose of determining whether and to what extent such compensation is “paid in” Illinois and is allocated to Illinois under IITA Section 302(a), be presumed to have been earned ratably over the employee’s last 5 years of service with the employer[...], in the absence of clear and convincing evidence that such compensation is properly attributable to a different period of employment[...]. Compensation earned in each past year will be deemed compensation paid in Illinois if the individual’s service in such year met the tests set forth in [100.3120(a)].

In conclusion, when applying the above provisions in this case, your client’s RSU and DCP pay received while a resident of STATE is taxable in Illinois if such compensation is considered “paid in STATE” pursuant to 86 Ill. Adm. Code 100.3120(b). As of the date of this letter, the pertinent sections of the Illinois Administrative Code may be found at: <http://www.ilga.gov/commission/jcar/admincode/086/08600100sections.html>

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 (217) 782-2844.

Sincerely,

Michael D. Mankowski  
Associate Counsel - Income Tax

cc: Daily File  
Correspondence file: