

No withholding of Illinois Income tax is required from employee compensation paid to a nonresident, if his or her state of residence has entered a reciprocal agreement with Illinois. (This is a GIL).

December 17, 2019

NAME

ADDRESS

Re: Illinois income tax

Dear NAME:

This is in response to your letter received December 5, 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 2 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:

I am writing this letter to ask for help with the reciprocity between Illinois and Wisconsin and my former employer, COMPANY located in CITY1, STATE.

Background:

- Worked for COMPANY in CITY2, IL from 2012-2018 earning stock options during that time
- Retired 07/31/2018 and moved to CITY3, WI living here since 08/10/2018

Issue:

- COMPANY is treating stock options earned in IL from 2012 to 2018 as IL income even though the exercise occurred after the move to WI.
- Informed and provided reciprocity documents and the IL-W-5-NR form (attached) to COMPANY Tax Analyst
- COMPANY will not change my tax withholdings from IL to WI for the stock options exercised while a WI resident unless they receive a letter from the State of IL stating that it is appropriate to report the income to WI versus IL.

- Have spent several hours with my accountant and this tax analyst on the phone but she will not consider making this change without a letter from the state of IL.

Asking for Help:

- Could you please provide a letter to me that states the taxes should be applied to WI and not IL?

RESPONSE

As a general rule, Section 302(a) of the Illinois Income Tax Act, 35 ILCS 5/302, imposes Illinois income tax on employee compensation of a nonresident to the extent the compensation is allocable to Illinois under the facts and circumstances of the employment. However, Section 302(b) provides:

(b) Reciprocal exemption. The Director may enter into an agreement with the taxing authorities of any state which imposes a tax on or measured by income to provide that compensation paid in such state to residents of this State shall be exempt from such tax; in such case, any compensation paid in this State to residents of such state shall not be allocated to this State.

Under that authority, the States of Illinois and Wisconsin entered a "reciprocal agreement" effective January 1, 1974, pursuant to which neither state taxes, nor requires withholding from, wages earned in the state by a resident of the other state. As a result, since you are currently a resident of Wisconsin, your stock option income is not allocated to Illinois.

In addition, Section 701(d) of the Illinois Income Tax Act, 35 ILCS 5/701(d), provides that no withholding of Illinois income tax is required from employee compensation paid to a nonresident if his or her state of residence has entered such a "reciprocal agreement" with Illinois.

Section 100.7090(a) of the Department's Rules, 86 Ill. Adm. Code 100.7090(a), further explains:

- a) The Director may enter into an agreement with the taxing authorities of any state which imposes a tax on or measured by income to provide that compensation paid in such state to residents of Illinois shall be exempt from withholding of such tax; in such case, any compensation paid in Illinois to residents of such state shall be exempt from withholding of Illinois income tax. Pursuant to such reciprocal agreements, the employer in Illinois should,

upon request by an employee residing in such other state, withhold tax on his compensation for the state of his residence.

(underlined emphasis added).

Since the states of Illinois and Wisconsin have entered into a reciprocal agreement, an employer of a Wisconsin resident who earns compensation paid in Illinois is not required to withhold Illinois income tax and should, upon request of the Wisconsin resident, withhold tax on the Illinois compensation for the state of Wisconsin.

Also, as noted on page 1 of the Illinois 2018 Schedule NR instructions, a Wisconsin resident whose only income allocable to Illinois is compensation exempted from Illinois income tax by the reciprocal agreement has no obligation to file an Illinois income tax return. In order to be entitled to this exemption from withholding, you must file Form IL-W-5-NR, Employee's Statement of Nonresidence in Illinois, with your employer. According to your letter, it appears as if you have filed the Form IL-W-5-NR with your former employer and should be entitled to the withholding exemption for compensation paid in Illinois.

If your former employer continues to erroneously withhold income taxes on Illinois compensation, you may file an IL-1040 and Schedule NR to claim a refund for the erroneously withheld income taxes. The 2018 IL-1040, Schedule NR, applicable instructions, and the statutes and rules cited above can all be found on the Department's website: www.tax.illinois.gov.

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 PHONE.

Sincerely,

Michael D. Mankowski
Associate Counsel - Income Tax