

Annuity proceeds paid to Illinois estate and distributed to nonresident beneficiaries are unspecified income not allocated to Illinois pursuant to IITA Section 301(c)(2)(A) (This is a GIL.)

April 12, 2022

Re: Illinois income tax

Dear NAME:

This is in response to your letter dated March 12, 2022, 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 ("GIL"), which is designed to provide general information, is not a statement of Department policy, and is not binding on the Department. See 2 Ill. Admin. 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 the executor of my mother's estate. She was an Illinois resident and owned a nonqualified annuity that had no designated beneficiary, and was therefore paid to the estate. The estate distributed the proceeds of the annuity to her children, the beneficiaries. Although I am an Illinois resident, my brother and sister are nonresidents.

I am requesting advice on whether the annuity proceeds are IL source income that is taxable to the nonresident beneficiaries. In reading 35 ILCS 5/301 (and the following sections 302, 303 and 304), I believe the annuity proceeds are not IL source income. Section 301(c)(2) provides that any item of income that is not specifically allocated pursuant to Sections 302, 303 or 304 shall not be allocated to this state for a nonresident. The instructions to Schedule K-1-T contain a list of items of nonbusiness income that are allocable to Illinois. The instructions further state that other unspecified items of income of a nonresident individual are not allocable to Illinois. Annuity proceeds are not one of the specified items. Further, the annuity proceeds do not seem to constitute business income that would be allocated to nonresidents. If the annuity designated the children as beneficiaries, rather than the estate, I do not believe the annuity would be taxable in Illinois to the nonresidents.

I am requesting advice to confirm that the annuity proceeds distributed from the estate to the nonresident beneficiaries are not business income and are therefore not taxable Illinois source income to them. In the event the annuity proceeds are taxable to the nonresident beneficiaries, I would

appreciate knowing the applicable authority for this. I can be contacted by mail, email, or by phone as shown on the heading of this letter.

RULING

Section 307(b) of the Illinois Income Tax Act, 35 ILCS 5/307(b), states as follows:

(b) Allocation of nonbusiness income by beneficiaries other than residents. To the extent items of estate or trust income and deduction not taken into account in computing the business income of an estate or trust are deemed to have been paid, credited or distributed by the estate or trust under Section 306, the respective shares of beneficiaries of the estate or trust, other than residents, in such items shall be taken into account by such beneficiaries in proportion to their respective shares of the distributable net income of the estate or trust for its taxable year, and allocated as if such items had been paid, incurred or accrued directly to such beneficiaries in their separate capacities.

(emphasis added.)

According to Section 307(b), the annuity proceeds are required to be allocated as if they had been paid directly to the beneficiaries in their separate capacities.

Section 301(c) of the Illinois Income Tax Act, 35 ILCS 5/301(c), states as follows:

(c) Other persons.

(1) In general. Any item of income or deduction which was taken into account in the computation of base income for the taxable year by any person other than a resident and which is referred to in Section 302, 303 or 304 (relating to compensation, nonbusiness income and business income, respectively) shall be allocated to this State only to the extent provided by such section.

(2) Unspecified items. Any item of income or deduction which was taken into account in the computation of base income for the taxable year by any person other than a resident and which is not otherwise specifically allocated or apportioned pursuant to Section 302, 303 or 304 (including, without limitation, interest, dividends, items of income taken into account under the provisions of Sections 401 through 425 of the Internal Revenue Code, and benefit payments received by a beneficiary of a supplemental unemployment benefit trust which is referred to in Section 501(c)(17) of the Internal Revenue Code):

(A) in the case of an individual, trust, or estate, shall not be allocated to this State; and

(B) in the case of a corporation or a partnership, shall be allocated to this State if the taxpayer had its commercial domicile in this State at the time such item was paid, incurred or accrued.

Section 303 of the Illinois Income Tax Act, 35 ILCS 5/303, controls the taxation of specific forms of nonbusiness income. Annuity proceeds are not one of the specified items of income listed in Section 303. Assuming that the annuity proceeds are non-business income, and that your siblings are nonresidents, which appears to be the case from your description, then you are correct. According to Section 301(c) of the Illinois Income Tax Act, the annuity proceeds should be treated as unspecified items of income which are not allocated to Illinois for nonresident individuals and are therefore not subject to Illinois income tax. For beneficiaries that are residents, Section 301(a) of the Illinois Income Tax Act allocates their distributive share of the annuity proceeds to Illinois making them subject to Illinois income tax.

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: