

General Information Letter: No withholding of Illinois tax is required from compensation paid to Illinois residents for employment in Missouri when Missouri taxes are withheld and the compensation is not "paid in this State" under IITA Section 304(a)(2)(B).

June 19, 2006

Dear:

Your letter to Paul Caselton dated May 25, 2006, in which you request advice. Department of Revenue ("Department") regulations require that the Department issue only two types of letter rulings, Private Letter Rulings ("PLRs") and General Information Letters ("GILs"). PLRs are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. GILs do not constitute statements of agency policy that apply, interpret or prescribe the tax laws and are not binding on the Department. For your general information, the regulation governing the issuance of letter rulings, 2 Ill. Adm. Code Part 1200 regarding rulings and other information issued by the Department, can be accessed at the Department's website. That address is www.revenue.state.il.us/legalinformation/regs/part1200.

The nature of your question and the information provided require that we respond only with a GIL.

In your letter you state as follows:

COMPANY is a multi-state employer with operations in both Missouri and Illinois. We have employees that reside in Illinois, but work at our Missouri location. Because a reciprocal agreement does not exist between Missouri and Illinois and we were unable to find documentation allowing only the worked in state to be withheld, our past practice has been to withhold for both states.

Until this year our employees have had no problems filing their personal income tax returns. Many of their tax preparers told them withholding in both states is unnecessary. Sharon Kessler from your office also stated to us withholding in both states is not required, but can continue as a service to our employees.

Now some of those employees have requested withholding for the worked in state only. In order to accommodate their requests we need documentation giving us the authority to do so.

At this time we would like to request that your office issue an Opinion Letter on whether withholding for the worked in state only would be appropriate. We look forward to being able to give our employees a definitive answer to their tax questions.

Ruling by Department

In response to your inquiry, we cannot advise you regarding the withholding laws of the State of Missouri. As to Illinois law, please be advised that Illinois Income Tax Act ("IITA") Section 701(a) governs withholding requirements and states:

Sec. 701. Requirement and Amount of Withholding.

(a) In General. Every employer maintaining an office or transacting business within this State and required under the provisions of the Internal Revenue Code to withhold a tax on:

(1) compensation paid in this State (as determined

under Section 304(a)(2)(B) to an individual; or

(2) payments described in subsection (b) shall deduct

and withhold from such compensation for each payroll period (as defined in Section 3401 of the Internal Revenue Code) an amount equal to the amount by which such individual's compensation exceeds the proportionate part of this withholding exemption (computed as provided in Section 702) attributable to the payroll period for which such compensation is payable multiplied by a percentage equal to the percentage tax rate for individuals provided in subsection (b) of Section 201.

(b) Payment to Residents. Any payment (including compensation) to a resident by a payor maintaining an office or transacting business within this State (including any agency, officer, or employee of this State or of any political subdivision of this State) and on which withholding of tax is required under the provisions of the Internal Revenue Code shall be deemed to be compensation paid in this State by an employer to an employee for the purposes of Article 7 and Section 601(b)(1) to the extent such payment is included in the recipient's base income and not subjected to withholding by another state. Notwithstanding any other provision to the contrary, no amount shall be withheld from unemployment insurance benefit payments made to an individual pursuant to the Unemployment Insurance Act unless the individual has voluntarily elected the withholding pursuant to rules promulgated by the Director of Employment Security.

Regarding "compensation paid in this state," IITA Section 304(a)(2)(B) provides:

Compensation is paid in this State if:

(i) The individual's service is performed entirely within this State;

(ii) The individual's service is performed both within and without this State, but the service performed without this State is incidental to the individual's service performed within this State; or

(iii) Some of the service is performed within this State and either the base of operations, or if there is no base of operations, the place from which the service is directed or controlled is within this State, or 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 this State.

The provisions of IITA 304(a)(2)(B) are designed to apply in such a manner that under them, compensation can generally be paid to a particular individual in only one state. Thus, if compensation

paid to an Illinois resident does not qualify as being "paid in this state" under IITA 701(a), and yet is subject to Missouri income tax withholding so as not to be covered under IITA 701(b), Illinois income tax need not be withheld from the same compensation. Conversely, compensation "paid in this state" to an individual by an employer meeting the conditions of IITA 701(a) will be subject to Illinois income tax withholding even though the same compensation is subject to withholding of another state's income tax under some other test. Obviously, application of these rules to your employees will depend upon the facts and circumstances of each individual person. Regulations implementing these laws are set forth at 86 Ill. Adm. Code 100.7000 et seq., and can be found at the Department's website mentioned above. You can also refer to the Department's IL-700 Booklet regarding withholding, available on the same website.

As stated above, this is a GIL 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 wish to obtain a PLR which will bind the Department with respect to the application of the law to specific facts, please submit a request conforming to the requirements of 2 Ill. Adm. Code Part 1200.

Sincerely yours,

Jackson E. Donley,
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