

General Information Letter: Employer shall withhold Illinois tax pursuant to Form IL-W-4 claiming exemption from tax based on federal Form W-4 until notified by the IRS that the federal form is invalid.

January 7, 2003

Dear:

This is in response to your letter to this office dated December 6, 2002, which was received on December 31, 2002. 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 in part as follows:

Enclosed is (1) copy of form IL-W-4 for employees claiming either in excess of 10 exemptions or exempt from tax.

Please be advised that Illinois Income Tax Regulation Section 100.7110) covers this situation. Subparagraph (c)(1)(B) thereof states in part as follows:

(B) Internal Revenue Service notification. If an employer receives a notice from the Internal Revenue Service relative to a particular employee’s withholding exemption certificate, which notice necessitates this employer treating such certificate as defective under (cite), then the employer shall withhold Illinois income tax from the employee as follows:

- (i) if the employee’s Form IL-W-4 claims total exemption from Illinois withholding, on the basis of the maximum number of exemptions specified by the Internal Revenue Service in the notice, or
- (ii) if the employee’s Form IL-W-4 claims a certain number of exemptions, on the basis of the number of exemptions thus claimed by the employee or on the basis of the maximum number of exemptions specified by the Internal Revenue Service in the notice, whichever is less.

Subparagraph (h) of that regulation also provides as in part as follows:

(h) Employer referral of certain Illinois exemption withholding certificates to the Department.

- 1) When required.

- A) Any Illinois withholding exemption certificate meeting all of the following criteria must be referred by the employer to whom it is submitted to the Illinois Department of Revenue not later than the day on which the next quarterly return of withholding is due. The criteria for referral are:
- i) that the certificate claims more withholding exemptions than the previously effective withholding certificate,
 - ii) that the certificate claims in excess of fourteen (14) exemptions, and
 - iii) that the employer had no obligation to submit a simultaneously effective federal certificate to the Internal Revenue Service under (cite).

Thus, an IL-W-4 claiming fifteen (15) or more exemptions must be referred to the Department unless the same number of exemptions are claimed on the federal form. In this case however, the employee is claiming total exemption from withholding on his IL-W-4 (copy enclosed with your correspondence) without stating a specific number of personal exemptions. Consequently, the employer should withhold Illinois income tax based upon the information provided on the IL-W-4 unless changed by a superceding notice received from the IRS relative to that form. The employee's IL-W-4 does not meet the criteria for referral to the Department as explicated by IIT Reg. Sec. 100.7110 (h).

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,
Senior Counsel-Income Tax