

General Information Letter: Withholding requirement for personal service contracts involving nonresident individuals under IITA Section 708 was repealed in 1989.

May 28, 2010

Dear:

This is in response to your inquiry posted on the State of Illinois Business Portal on May 25, 2010, which has been forwarded to me for consideration. 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).

In your inquiry you have stated the following:

I am a purchasing agent with UNIVERSITY, a State University in CITY. One of the provisions of the Two Part Contracts that are executed between the University and a given contractor is: IN ACCORDANCE WITH THE ILLINOIS TAX ACT, SECTION 708, Contractor Declares the s/he/it is a resident of the State of _____. I have been all of the web trying to find a reference to section 708 and have not been able to locate it. My question is this. Most of the companies I deal with are residents of Illinois and were incorporated in Illinois. However some companies were incorporated elsewhere yet have locations in Illinois. In an instance where a company was incorporated in STATE yet also has residency in Illinois – which is the proper State to record as resident of? Also where can I secure a copy of Section 708 of the Illinois Tax Act?

Response

It appears that the contract is referring to former Section 708 of the Illinois Income Tax Act (Ill. Rev. Stat., ch. 120, ¶ 7-708), which was repealed in 1989 by Public Act 85-299. Prior to its repeal, Section 708 required withholding from payments made on certain contracts for personal services, unless the contract certified that the individuals performing the services were Illinois residents.

Because this statute has been repealed, and the certification of residency applied only to individuals, questions about the application of the statute to business entities are moot.

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, you may contact me at (217) 782-7055.

Sincerely,

Paul S. Caselton
Deputy General Counsel – Income Tax