

General Information Letter: An individual will be allowed credit for Illinois income tax withholding reported on a Form W-2 under a different name if the individual can demonstrate that the IRS allowed the individual a credit for the federal income tax withholding reported on that Form W-2.

October 18, 2010

Dear:

This is in response to your letter dated September 3, 2010 in which you state the following:

In response to your letter, the taxpayer offers the following. The notice the Illinois Department of Revenue sent the taxpayer states they changed the taxpayer's Illinois Income Tax withheld on Line 22 for 2009 because of one of the following: they received duplicative W-2 or 1099 forms, W-2 or 1099 forms that were not issued in their name, or W-2 or 1099 forms that were not issued with their Social Security Number.

Mr. Z and his spouse, Ms. Y, filed a joint tax return in 2009. Based on the letter they received, they changed Line 22 because the W-2 attached was in the name of Ms. W, SSN XXX-XX-XXXX. This W-2 was submitted because the attached W-2 listed under Ms. W is the actual earnings of Ms. Y. Ms. Y is a resident alien without a Social Security Number. Therefore, she works under a name and Social Security Number that is not her own.

In the past, I have contacted the IRS regarding this matter in order to understand how to ethically treat these cases. The IRS offered the following. Regardless of how an individual generates income, the individual is obligated to pay income taxes on the income he or she receives. This includes, but is not limited to, income received by performing illegal acts such as selling drugs, prostitution, and identity theft. The IRS also informed me that individuals who work under a name and/or Social Security Number that is not their own, must pay taxes on the income they received by applying for an ITIN and filing their taxes under their correct name and ITIN. The return documents should also be accompanied by their W-2, (regardless of whose name is on it), and a note disclosing that the W-2 is the taxpayer's actual earnings. Once the IRS receives this documentation, they remove the wages and withholdings from the W-2 and apply it onto the reporting taxpayer's ITIN. Both the wages and withholding are then credited to the actual person earning those wages and removed from the name and Social Security Number on which it was reported.

I have also contacted Illinois regarding situations like these. I was informed that Illinois follows the IRS's lead in this matter, and since the IRS accepts both the wages and withholdings in these situations, so does Illinois. As instructed by the IRS, the taxpayers and I have taken the proper procedures in order to correctly file their return. If the above still holds true, that Illinois follows the IRS in these situations, then all information listed on the original return is correct. Therefore, it is unclear to us why the taxpayers continue to receive notices from the State regarding this matter.

According to the Department of Revenue ("Department") regulations, the Department may issue only two types of letter rulings: Private Letter Rulings ("PLR") and General Information Letters ("GIL"). The regulations explaining these two types of rulings issued by the Department can be found in 2 Ill. Adm. Code §1200, or on the website <http://www.tax.illinois.gov/LegalInformation/regs/part1200>.

Due to the nature of your inquiry and the information presented in your letter, we are required to respond with a GIL. GILs are designed to provide background information on specific topics. GILs, however, are not binding on the Department.

You are correct that Illinois allows taxpayers to claim their withholdings on an Illinois return when the name and/or tax identification on the W-2 does not match that of the taxpayer so long as taxpayers provide proof that the IRS accepted the corresponding federal withholdings on the income in question. Pursuant to IITA Section 601(b)(1), taxpayers claiming "income" are entitled to the amount withheld from such compensation paid to them. The specific language is as follows:

- (a) Amount payable. In making payment as provided in this section there shall remain payable only the balance of such tax remaining due after giving effect to the following:
 - (1) Withheld tax. Any amount withheld during any calendar year pursuant to Article 7 from compensation paid to a taxpayer shall be deemed to have been paid on account of any tax imposed by subsections 201(a) and (b) of this Act on such taxpayer for his taxable year beginning in such calendar year. If more than one taxable year begins in a calendar year, such amount shall be deemed to have been paid on account of such tax for the last taxable year so beginning.

Your letter and the attachments do not provide sufficient proof that the IRS accepted the withholdings shown on Ms. W's W-2 as those belonging to Ms. Y. The W-2 form you submitted has no federal withholdings listed and there is no documentation from the IRS showing that the IRS moved the withholdings to Ms. Y's federal ITIN. According to IITA Section 506.5, taxpayers are allowed Illinois withholding based on receipt of proof that the IRS allowed the withholding:

506.5: Returns based on Substitute W-2 Forms.

For a taxpayer who has received wages from an employer in Illinois, loses or was not provided a W-2 form, is unable to obtain a duplicate W-2 form from the employer, and subsequently obtains a substitute W-2 form from the Internal Revenue Service, it shall be presumed that tax was withheld under Article 7 of this Act in an appropriate amount based on the number of withholding exemptions used to determine the federal income tax withholding for the taxpayer if (i) the substitute W-2 form indicates the appropriate amount of federal taxes withheld, (ii) the taxpayer files a copy of the substitute W-2 form with his or her Illinois income tax return, and (iii) the taxpayer provides a mailing address to which any correspondence or refund, if any, may be sent.

Once IDOR receives proof that the IRS allowed the withholdings on Ms. W's W-2 to be posted on Ms. Y's federal income tax return IDOR will likewise allow credit for the corresponding Illinois withholdings to Ms. Y. Please submit proper documentation to Mr. V, Individual Processing Division, 101 West Jefferson Street, Springfield, IL 62702 who will make the appropriate adjustments.

To avoid delays in the processing of future returns where the SSN on the W-2 and the return does not match, please instruct your clients to provide IDOR with evidence that the IRS accepted the federal withholdings from the mismatched W-2. If the documentation is not attached to the return, no credit will be allowed for amounts withheld until such documentation is provided.

As stated above, this is a general information letter which does not constitute a statement of policy

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that either applies, interprets or prescribes tax law. It is not binding on the Department. Should you have additional questions, please do not hesitate to contact our office.

Sincerely,

Heidi Scott
Staff Attorney -- Income Tax