

General Information Letter: Application of law regarding when compensation is “paid in this State” to various examples.

May 13, 2011

Dear:

This is in response to your letter dated April 26, 2011, in which you request a letter ruling. 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 letter you have stated the following:

To fulfill the University's educational mission, the University has expanded beyond the state of Illinois boundaries. The University now has business locations and employees working outside the state of Illinois.

LAW

- 1) The Illinois Income Tax Act-Withholding Tax 35 ILCS 5/701 imposes a requirement and amount of withholding on every employer maintaining an office or transacting business within Illinois and required under the Internal Revenue Code on compensation paid in Illinois to an individual.
- 2) The Department's Regulation 86 Ill Admin. Code Section 100.7010 provides general rules on withholding required with respect to compensation paid in Illinois, place of residence of employee, localization tests, base of operations, place of direction or control, and residency consideration to determine Illinois income tax withholding obligations.

INFORMATION REQUESTED

The University is interested in acquiring answers based on the following scenarios for Illinois income tax withholding requirements for compliance purposes.

Scenario 1

University employee has a permanent job location in a state other than Illinois. The University does not have a business location in this state. The employee performs duties from home office or other location separate from the University (e.g., an agency of the federal government or another school). The employee receives direction from supervisor. The employee's supervisor is located in a University office in Illinois. The employee returns to Illinois once or twice a **year** for business purposes (services performed in Illinois are incidental).

Questions for Scenario 1: Is the University required to withhold Illinois income tax? Would the Illinois withholding result be the same if the employee has a temporary one year job assignment (with possibility of extension) with intentions to return to Illinois, and

maintains Illinois residency?

Scenario 2 (same as Scenario 1 except employee returns to Illinois once or twice a month as opposed to once or twice a year)

University employee has permanent job location in a state other than Illinois. The University does not have a business location in this state. The employee performs duties from home office or other location separate from the University (e.g., an agency of the federal government or another school). The employee receives direction from supervisor. The employee's supervisor is located in a University office in Illinois. The employee returns to Illinois once or twice a **month** for business purposes (significant services are performed in both states).

Questions for Scenario 2: Is the University required to withhold Illinois income tax? Would the Illinois withholding result be the same if the employee has a temporary one year job assignment (with possibility of extension) with intentions to return to Illinois, and maintains Illinois residency?

Scenario 3 (same as Scenario 1 except other state has no income tax)

University employee has permanent job location in a state other than Illinois. The University does not have a business location in this state. The employee performs duties from home office or other location separate from the University (e.g., an agency of the federal government or another school). The employee receives direction from supervisor. The employee's supervisor is located in a University office in Illinois. The employee returns to Illinois once or twice a **year** for business purposes (services performed in Illinois are incidental). **There is no state income tax in this state.**

Questions for Scenario 3: Is the University required to withhold Illinois income tax? Would the Illinois withholding result be the same if the employee has a temporary one year job assignment (with possibility of extension) with intentions to return to Illinois, and maintains Illinois residency?

Scenario 4 (same as Scenario 2 except other state has no income tax)

University employee has permanent job location in state other than Illinois. The University does **not** have a business location in this state, and employee performs duties from home office (or other location separate from the University). The employee receives direction from supervisor. The employee's supervisor is located in a University office in Illinois. The employee returns to Illinois once or twice a **month** for business purposes (significant services are performed in both states). **There is no state income tax in this state.**

Questions for Scenario 4: Is the University required to withhold Illinois income tax? Would the Illinois withholding result be the same if the employee has a temporary one year job assignment (with possibility of extension) with intentions to return to Illinois, and maintains Illinois residency?

Scenario 5 (same as Scenario 1 except University has a location in another state)

University employee has permanent job location in a state other than Illinois. The University has a business location in this state. The employee receives direction from supervisor. The employee's supervisor is located in a University office in Illinois. The employee returns to Illinois once or twice a **year** for business purposes (services performed in Illinois are incidental).

Questions for Scenario 5: Is the University required to withhold Illinois income tax? Would the Illinois withholding result be the same if the employee has a temporary one year job assignment (with possibility of extension) with intentions to return to Illinois, and maintains Illinois residency?

Scenario 6 (same as Scenario 2 except University has a location in another state)

University employee has permanent job location in a state other than Illinois. The University has a business location in this state. The employee receives direction from supervisor. The employee's supervisor is located in a University office in Illinois. The employee returns to Illinois once or twice a **month** for business purposes (significant services are performed in both states).

Questions for Scenario 6: Is the University required to withhold Illinois income tax? Would the Illinois withholding result be the same if the employee has a temporary one year job assignment (with possibility of extension) with intentions to return to Illinois, and maintains Illinois residency?

Scenario 7 (same as Scenario 3 except University has a business location in another state)

University employee has permanent job location in a state other than Illinois. The University has a business location in this state. The employee receives direction from supervisor. The employee's supervisor is located in a University office in Illinois. The employee returns to Illinois once or twice a **year** for business purposes (services performed in Illinois are incidental). **There is no state income tax in this state.**

Questions for Scenario 7: Is the University required to withhold Illinois income tax? Would the Illinois withholding result be the same if the employee has a temporary one year job assignment (with possibility of extension) with intentions to return to Illinois, and maintains Illinois residency?

Scenario 8 (same as Scenario 4 except University has a business location in another state)

University employee has permanent job location in a state other than Illinois. The University has a business location in this state. The employee receives direction from

supervisor. The employee's supervisor is located in a University office in Illinois. The employee returns to Illinois once or twice a month for business purposes (significant services are performed in both states). There is no state income tax in this state.

Questions for Scenario 8: Is the University required to withhold Illinois income tax? Would the Illinois withholding result be the same if the employee has a temporary one year job assignment (with possibility of extension) with intentions to return to Illinois, and maintains Illinois residency?

Response

Section 701 of the Illinois Income Tax Act (35 ILCS 5/101 *et seq.*) provides, in part:

(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 . . .

(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.

Section 304(a)(2)(B) of the Illinois Income Tax Act provides, in part:

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.

In none of your scenarios does the employee perform all of his or her services within Illinois, nor are the employee's services performed outside Illinois incidental to the services provided within Illinois. Accordingly, neither Section 304(a)(2)(B)(i) nor (ii) would apply.

86 Ill. Adm. Code Section 100.7010(a)(3) provides:

The foregoing rules are to be applied in such manner that, if they were in effect in other states, an item of compensation would constitute "compensation paid in" only one state.

Pursuant to this provision, in the scenarios in which you state that the services performed in Illinois are incidental to the services performed in the other state, the wages would be "paid in the other state" under Section 304(a)(2)(B)(ii) and could not be treated as "paid in this State." In those scenarios, withholding would not be required under Section 701(a)(1).

Assuming the wages are not paid in another state under the principles of Section 304(a)(2)(B)(ii), Section 304(a)(2)(B)(iii) would apply. Under that statute, if the employee's "base of operations" is outside Illinois, the employee's wages would not be "paid in this State."

86 Ill. Adm. Code Section 100.7010(d)(2) provides:

The term "base of operations" refers to the place or fixed center from which the individual works. An individual's base of operations may be his business office (which may be maintained in his home), or his contract of employment may specify a place at which the employee is to receive his directions and instructions. In the absence of more controlling factors, an individual's base of operations may be the place to which he has his business mail, supplies, and equipment sent or the place where he maintains his business records.

In each of your scenarios, you state that the employee will have a "permanent job location" in another state, which is variously described as a "home office" or "an agency of the federal government or another school." From these descriptions, the "permanent job location" is the "base of operations" of the employee, and none of the wages paid to an employee under any of your scenarios would be "paid in this State." Accordingly, none of the wages paid to an employee in any of your scenarios would be subject to Illinois income tax withholding under Section 701(a)(1).

Under Section 701(b), however, wages paid to an Illinois resident employee are subject to Illinois income tax withholding if the wages are subject to federal income tax withholding but are not subject to withholding of another state's income taxes. Under this provision, in each of the scenarios involving an Illinois resident whose permanent job location is in a state that does not impose an income tax, the employee's wages would be subject to Illinois income tax withholding.

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,

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May 13, 2011

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