

General Information Letter: Illinois income tax must be withheld from wages paid in this State from which federal income tax must be withheld.

August 22, 2011

Dear:

This is in response to your letter received by this office August 4, 2011, in which you request information regarding Illinois income tax law. The nature of your letter and the information provided require that we respond with a General Information Letter (GIL). A GIL 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 accessed from the Department's web site at www.Iltax.com.

Your letter states as follows:

I write this letter of concern in hopes of discovering a solution to a financial dilemma that's been occurring throughout this incarceration. I have been told by the Business Administrator of the CORRECTIONAL CENTER who is the power of attorney for all inmates of this facility, that state tax is being taken out of every inmate's payroll. We receive a payroll of different amounts.

My question is this. Is it legal for the institution to take state tax out of money we don't receive an actual check for? And if so can you send me something that explains the tax laws govern I.D.O.C. inmates payroll. And if it is true that taxes have been deducted, how can I find out how to file W2 tax returns at the end of the year?

Thank you for reviewing my letter of concern.

RULING

Department of Revenue Regulations Section 100.7000(a) states:

Every employer maintaining an office or transacting business within this State and required under the provisions of 26 USC 3401 through 3404 to withhold and pay federal income tax on compensation paid in this State (see Section 100.7010 of this Part) to an individual is required to deduct and withhold from such compensation for each payroll period (as defined in 26 USC 3401), an amount computed in accordance with IITA Section 701 and 702. Illinois income tax is not required to be withheld on any compensation paid in this State of a character which is not subject to federal income tax withholding (whether or not such compensation is subject to withholding for federal taxes other than income tax, e.g. F.I.C.A. (Social Security taxes). (As to what constitutes "transacting business within this State," see Section 100.7020 of this Part).

As this Section indicates, Illinois withholding is only required in respect of compensation subject to federal income tax withholding. Whether or not federal income tax withholding is required is a question of federal law.

Under Department Regulations Section 100.7200, the requirement to furnish and retain IRS Form W-2 is imposed upon the employer. Therefore, you are not required to file a Form W-2.

As stated above, this is a GIL. A GIL does not constitute a statement of policy that applies, interprets

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or prescribes the tax laws, and it is not binding on the Department.

Sincerely,

Brian L. Stocker
Associate Counsel (Income Tax)