IT 12-0013-GIL 05/24/2012 SUBTRACTION MODIFICATIONS – PENSIONS

> General Information Letter: Pension paid by an Italian corporation and social security payments by the Italian government do not qualify for subtraction.

May 24, 2012

Dear:

This is in response to your letter dated January 10, 2012 in which you state the following:

> Request for General Information Letter. We request to know whether income from Italian social security, and Italian retirement pensions and annuities are treated in the same manner as US social security and US pensions and annuities and how an Illinois resident reports this.
>
> We have a dual Italian American citizen who now resides in the state of Illinois. Prior to his becoming a US resident about 10 years ago, he worked in Italy and had sufficient credits that in 2008 he became eligible for a pension from the Instituto Nazionale Previdenze Sociale (INPS), which is the Italian counterpart of our Social Security. He also receives a pension annuity from his former Italian employer's pension plan.
>
> Under our totalization agreement and tax treaty with Italy, he reports the annual proceeds on his US 1040 and claims a foreign tax credit which essentially eliminates any US tax due.
>
> Illinois Revised Statutes Section 203(a)(2)(F) provides a subtraction for:
>
>> An amount equal to all amounts included in such total pursuant to the provisions of Sections 402(a), 402(c), 403(a), 403(b), 406(a), 407(a), and 408 of the Internal Revenue Code, or included in such total as distributions under the provisions of any retirement or disability plan for employees of any governmental agency or unit, or retirement payments to retired partners, which payments are excluded in computing net earnings from self employment by Section 1402 of the Internal Revenue Code and the regulations adopted pursuant thereto; …
>
> As his income is from the treaty equivalent of US Social Security and a qualified pension annuity, and it was included in adjusted gross income, can it be subtracted on schedule M to reduce his Illinois Income? Does the answer change if it appears on line 21 of form 1040 instead of lines 15 or 20?

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.

Under Illinois law, an individual's base income for Illinois income tax liability is the taxpayer's federal adjusted gross income as modified by certain addition and subtraction modifications set forth in Section 203 of the Illinois Income Tax Act ("IITA;" 35 ILCS 5/101 et seq.) Your letter asks whether Illinois allows a subtraction modification for Italian social security payments and a qualified Italian pension annuity, and you cite IITA Section 203(a)(2)(F) as a basis that to support a subtraction modification for such retirement income.

IITA Section 203(a)(2)(F) is limited to amounts addressed in IRC Sections 402(a), 402(c), 403(a), 403(c), 406(a), 407(a), and 408, or government retirement payments to government employees. None of these include retirement payments from an Italian employer. As a result, the income from an Italian qualified pension annuity will be taxed in Illinois.

Illinois has a separate subtraction modification for social security benefits: IITA Section 203(a)(2)(L) states as follows:

> For taxable years ending after December 31, 1983, an amount equal to all social security benefits and railroad retirement benefits included in such total pursuant to Sections 72(r) and 86 of the Internal Revenue Code.

IRC Sections 72(r) and 86 relate only to U.S. social security and U.S. Tier 1 railroad retirement benefits. There is no subtraction modification for Italian social security payments allowed under Illinois law.

Upon review of the U.S.-Italy Income Tax Treaty referred to in your letter, the Treaty provides that U.S. and Italian pensions are taxable only in the country of ***residence*** of the recipient. Thus, as a resident of Illinois, your client must pay tax on Italian pension and social security payments received while a resident of Illinois.

As stated above, this is a general information letter which does not constitute a statement of policy 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
Associate Counsel -- Income Tax