IT 13-0003-GIL 03/26/2013 SUBTRACTION MODIFICATIONS – PENSIONS

> General Information Letter: Pensions received from overseas employment by foreign corporations most likely do not qualify for subtraction from adjusted gross income.

March 26, 2013

Dear:

This is in response to your letter dated March 11, 2013, 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.

In your letter you have stated the following:

> This letter requests a "Private Letter Ruling" concerning the taxability for Illinois tax purposes of a pension paid by a foreign entity to an Illinois citizen.
>
> Taxpayers are husband and wife, citizens of the United States, Citizens of the State of Illinois, and resided in COUNTY Illinois for the entire year in issue. Husband and wife file joint federal and State of Illinois returns and both are more than 65 years old.
>
> Husband is currently employed as an accountant auditor and wife is retired. Husband receives and reports wage income and social security income. Wife reports social security income. She reports income from two pensions on lines 16(a) and 16(b) of the taxpayers' 1040 federal income tax return. (Taxpayers also have a small amount of interest income from two bank accounts.)
>
> Taxpayer Wife's pension income is made up of two components. The first component is a small pension from a U.S. corporation. It is included in taxpayer's federal taxable income and is excluded from Illinois income. It is not in issue.
>
> Taxpayer Wife's second pension is paid by "the COMPANY" which is "part of the DEPARTMENT" in the COUNTRY.
>
> Taxpayer wife was employed in COUNTRY for approximately thirteen (13) years. One of the elements of her remuneration was a pension. In COUNTRY, her employer, a nongovernmental entity, paid her pension over to the "COMPANY" as is the custom in that country. When taxpayer wife reached retirement age "The COMPANY" began payment of her weekly pension which is currently paid at the rate of AMOUNT per week. The weekly pension is regularly adjusted for changes in the cost of living.
>
> The instructions for IL-1040 for line 5 describe the rules for adjustments to "base income" where pensions are backed out of Illinois taxable income. Foreign pensions are not included in the descriptions provided all be it references are made to "Publication 120."
>
> Publication 120 answers the question, "What retirement income may I subtract on Form IL-1040, Line 5 . . . " on page 2. The instruction provided is, "You may subtract the amount of any federally taxed portion (not the gross amount) included in your Form IL-

> 1040, Line 1 that you received from > a qualified employee benefit plan including 401(k) plans as reported on your U.S. 1040, Line 16b Note> A qualified employee benefit plan is defined in IRC Sections 402 through 408. (Sections 402 through 408 are the U.S. tax framework for which pensions are deductible by an employer. Section 61 is the section in the IRC under which pensions are includable in federal income.)
>
> The question that you are asked to rule on is the pension paid by a foreign entity to a United States citizen that is includable in federal income excludable for Illinois income tax purposes.

Response

Under Section 203(a) of the Illinois Income Tax Act (35 ILCS 5/203), the computation of an individual's "net income" taxed by Illinois begins with the taxpayer's federal adjusted gross income, as properly computed for the taxable year. Various addition and subtraction modifications are then made, and the resulting "base income" is then allocated and apportioned to Illinois. Section 203(h) provides that no modification may be made to adjusted gross income unless expressly provided in Section 203.

Section 203(a)(2)(F) allows an individual to subtract from his or her adjusted gross income:

> 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 regulations adopted pursuant thereto.

Section 402 of the Internal Revenue Code deals with distributions from employee trusts exempt under Section 401(a) of the Internal Revenue Code, which provides an exemption for certain employee trusts “created or organized in the United States.”

Section 403(a) of the Internal Revenue Code deals with annuities described in Section 404(a)(2) of the Internal Revenue Code, which describes certain annuities purchased by employee trusts exempt under Section 401(a) of the Internal Revenue Code.

Section 403(b) of the Internal Revenue Code deals with annuities for employees of exempt organizations.

Sections 406 and 407 of the Internal Revenue Code deal with employee benefit plans under Section 401 that cover overseas employees of affiliates of the employer that created the plan.

Section 408 of the Internal Revenue Code deals with individual retirement accounts.

None of these provisions would appear to apply to a retirement plan of a private employer in COUNTRY, and the pension income would therefore not qualify for subtraction under Section 203(a)(2)(F).

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