IT 13-0004-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 undated letter dated, which we received on March 20, 2013. In your letter, 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:

> I am writing to ask for clarification about whether Illinois taxes pensions paid by a foreign company to an Illinois citizen. The specific situation is a retired person who worked for the BANK in COUNTRY. He is now retired and a citizen of Illinois and receiving a pension from the BANK.
>
> Does such a plan meet Illinois' qualifications for tax exemption of pension income? I am hoping you can provide a General Information Letter covering this topic. I have received conflicting information from other tax preparers more familiar with Illinois tax law than am I.

<u>Response</u>

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 the BANK, 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