

IT 13-0009-GIL 08/26/2013 COMPENSATION

General Information Letter: Employee compensation of a nonresident is not sourced to Illinois unless the nonresident performs some services in Illinois.

August 26, 2013

Dear:

This is in response to your letter dated August 13, 2013. The nature of your letter requires 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](http://www.ILtax.com).

Your letter states as follows:

I talked to one of your agents on this matter and he told me to contact you for help. The problem is that there is 6 truck drivers here in CITY1, STATE that live and work in CITY1, STATE and the company that we work for is located in CITY2, IL. Each week they deduct Illinois income taxes from our pay check even though we only work in CITY1, STATE. I tried to tell them that we do not need to have this taken out because we do not work or live there in Illinois. So attached is the response I got back from them. This letter does not make sense to me because they the company pays corporate Illinois taxes for the business but we should not have to pay Illinois state income taxes there when we work in CITY1, STATE. Please clear this up with us drivers in CITY1, STATE and or the Company in Illinois. They will only change this if you tell them otherwise. This would be greatly appreciated for us here in CITY1, STATE.

Your employer's letter, a copy of which was included with your letter, states:

We are in receipt of your letter requesting exemption from Illinois state tax withholding. Based on our thorough research with the Illinois Department of Revenue, we have substantiated that COMPANY is following the proper procedures outlined in Department of Revenue Publications by withholding Illinois state taxes from your wages. While you are a resident of STATE, your base of operations from which the service you provide is directed or controlled in the State of Illinois.

Therefore, we will continue to deduct Illinois state taxes from your wages. At the end of the tax year, you must file an IL 1040 and follow the guidelines provided for a non-resident of the state.

If you disagree with this decision, please have the Illinois Department of Revenue provide us written justification that supports a determination to exempt you from state withholding.

**RULING**

Section 701(a) of the Illinois Income Tax Act ("IITA" 35 ILCS 5/701) requires every employer maintaining an office or transacting business in Illinois to withhold Illinois income tax on wages that constitute "compensation paid in this State" under IITA Section 304(a)(2)(B). Section 304(a)(2)(B) states that compensation is paid in this State if:

- (1) The individual's service is performed entirely within this State;
- (2) 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

- (3) 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.

As can be seen, where no part of an individual's service is performed within Illinois, income tax withholding is not required. This is true regardless of the fact that the individual's base of operations is in Illinois.

Department Regulations Section 100.3120(a)(2) elaborates on these rules as follows:

The [rules regarding compensation paid in this State] 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. Thus, if an item would, under these rules, constitute compensation paid in a state other than Illinois because the individual's service was localized in such other state ..., it could not also be compensation paid in Illinois.

Your letter suggests that the services you perform for COMPANY are performed entirely within the STATE. If that is in fact the case, then your wages are not considered compensation paid in Illinois. The rules under IITA Section 304(a)(2)(B) and Regulations Section 100.3120(a)(2) would classify your wages as compensation paid in STATE. Accordingly, your employer would not be required to withhold Illinois income tax.

As stated above, this is a GIL. A GIL 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 have further questions regarding this GIL, please call (217) 782-7055.

Sincerely,

Brian L. Stocker  
Associate Counsel (Income Tax)