IT 14-0015 GIL 09/24/14 Withholding – Other Rulings

A taxpayer is allowed to claim personal and dependency exemptions in order to determine the withholding required from his nonqualified retirement plan income.

September 24, 2014

Re: Illinois Income Tax Withholding

Dear Xxxx:

This is in response to your letter dated September 9, 2014 in which you request a private letter ruling. Department of Revenue ("Department") regulations require that the Department issue only two types of letter rulings, Private Letter Rulings ("PLRs") and General Information Letters ("GILs"). PLRs are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding against the Department, but only as to the taxpayer issued the ruling and only to the extent the facts recited in the PLR are correct and complete. GILs do not constitute statements of Department policy that apply, interpret or prescribe the tax laws and are not binding against the Department. See 2 Ill. Adm. Code 100.1200(b) and (c). The nature of your request and the information you have 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 found on the Department's website at www.revenue.state.il.us.

In your letter you have stated the following:

This ruling is requested on behalf of myself. The requested ruling relates to the calculation of Illinois withholding tax by COMPANY, ADDRESS, CITY, STATE, ZIP CODE for my non-exempt pension from the BANK.

Required Information

1) COMPANY assumed responsibility for processing payments for this pension in June 2014. For the tax withheld for the State of Illinois, COMPANY has

- refused any substantive interaction with myself during the past three months,
- refused to provide any contact information for any individual at COMPANY who could address my concerns, and
- refused the requests of senior human relations personnel from BANK to explain the unwarranted refusal of COMPANY to take into account any exemptions and/or allowances in calculating Illinois withholding tax.

COMPANY utilizes the Automated Payroll Method. The Automated Payroll Method is shown on page 4 of the booklet, IL-700-T (R-13/13) effective January 1, 2014. It was published in January 2014 at http://www.revenue.state.il.us/TaxForms/Withholding/index.htm. This booklet provides for the deduction, before calculating of withholding, of (Line 1 allowances × $X,XXX) + (Line 2 allowances × $X,XXX)/number of pay periods per year. As can be seen on the attachment for the August pay period, state withholding is calculated by COMPANY at a flat five percent of gross pay before allowances.

2) No additional agreements apply.

3) This matter concerns the tax period beginning with June 2014 and thereafter.

4) To the best of my knowledge the Department has not previously ruled on the same or a similar issue and neither I nor any representative has previously submitted the same or a similar issue.
5) Support: see (1) above.
6) No contrary authorities of which I am aware.
7) The only non-public information is the salary information on the attachment provided.

I request a ruling requiring COMPANY to allow my appropriate allowances in calculating my Illinois withholding tax.

RESPONSE

Section 701 of the Illinois Income Tax Act ("the IITA"; 35 ILCS 5/101 *et seq.*) sets forth requirements relating to withholding of Illinois income tax:

> Sec. 701. Requirement and Amount of Withholding
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> (a) In General. Every employer maintaining an office or transacting business within this State and required under the provisions of the Internal Revenue Code to withhold a tax on:
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> (1) compensation paid in this State (as determined under Section 304(a)(2)(B)) to an individual; or
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> (2) payments described in subsection (b) shall deduct and withhold from such compensation for each payroll period (as defined in Section 3401 of the Internal Revenue Code) an amount equal to the amount by which such individual's compensation exceeds the proportionate part of this withholding exemption (computed as provided in Section 702) attributable to the payroll period for which such compensation is payable multiplied by a percentage equal to the percentage tax rate for individuals provided in subsection (b) of Section 201.
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> (b) Payment to Residents. Any payment (including compensation, but not including a payment from which withholding is required under Section 710 of this Act) to a resident by a payor maintaining an office or transacting business within this State (including any agency, officer, or employee of this State or of any political subdivision of this State) and on which withholding of tax is required under the provisions of the Internal Revenue Code shall be deemed to be compensation paid in this State by an employer to an employee for the purposes of Article 7 and Section 601(b)(1) to the extent such payment is included in the recipient's base income and not subjected to withholding by another state.
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> …
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> (c) Special Definitions. Withholding shall be considered required under the provisions of the Internal Revenue Code to the extent the Internal Revenue Code either requires withholding or allows for voluntary withholding the payor and recipient have entered into such a voluntary withholding agreement. For purposes of Article 7 and Section 1002(c) the term "employer" includes any payor who is required to withhold tax pursuant to this Section.
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> …
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> (e) Notwithstanding subsection (a)(2) of this Section, no withholding is required on payments for which withholding is required under Section 3405 or 3406 of the Internal Revenue Code.

Section 702 sets forth the amount exempt from withholding:

> Sec. 702. Amount Exempt from Withholding. For purposes of this Section an employee shall be entitled to a withholding exemption in an amount equal to the basic amount in Section 204(b) for each personal or dependent exemption which he is entitled to claim on his federal return pursuant to Section 151 of the Internal Revenue Code; plus an allowance equal to $1,000 for each $1,000 he is entitled to deduct from gross income in arriving at adjusted gross income pursuant to Section 62 of the Internal Revenue Code; plus an additional allowance equal to $1,000 for each $1,000 eligible for subtraction on his Illinois income tax return as Illinois real estate taxes paid during the taxable year; or in any lesser amount claimed by him. Every employee shall furnish to his employer such information as is required for the employer to make an accurate withholding under this Act. The employer may rely on this information for withholding purposes. If any employee fails or refuses to furnish such information, the employer shall withhold the full rate of tax from the employee's total compensation.[1]

Based on the information contained in your letter and the attached statement, it appears that Illinois income tax withholding with respect to your nonqualified pension is required under IITA Section 701. Under IITA Section 701(a)(2), the amount required to be withheld is equal to 5% of the amount of the distribution that exceeds the proportionate part of your withholding exemption (computed as provided in IITA Section 702). The proportionate part of your withholding exemption is calculated as provided in Booklet IL-700-T (Illinois Withholding Tax Tables). Your letter indicates that the payor, COMPANY, utilizes the Automated Payroll Method described in Booklet IL-700-T to determine the amount of withholding. Under that method, the proportionate part of your withholding exemption is determined by dividing the sum of your Line 1 Allowances plus Line 2 Allowances by the number of pay periods during the year. The Line 1 Allowance and Line 2 Allowance refers to the allowances claimed by the payee on lines 1 and 2 of Form IL-W-4.

In this case, the statement attached to your letter indicates that you have claimed 4 withholding allowances. Nonetheless, Illinois income tax has been withheld at a rate equal to 5% of the amount of your distribution, without reduction by the proportionate part of your withholding exemption. This is in error. The payor, COMPANY, should reduce the amount withheld by taking into account the proportionate part of your withholding exemption as computed under the Automated Payroll Method described in Booklet IL-700-T.

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 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 one through eight of 86 Ill. Adm. Code 1200.110(b).

Sincerely,

Brian L. Stocker
Staff Attorney (Income Tax)

[1] Public Law 87-17, effective July 1, 1991, repealed the subtraction modification for Illinois real estate taxes. Therefore, the additional allowance for each $1,000 eligible for subtraction as Illinois real estate taxes paid no longer applies.