

IT 14-0018 GIL 10/17/2014 Credits – Foreign Tax

The credit for taxes paid to other states may not exceed the amount of Illinois income tax attributable to income that would be sourced to other states if all other states used Illinois' allocation and apportionment rules. Because nonbusiness gambling winnings are sourced to the state of residency under the Illinois Income Tax Act, this limitation does not include Illinois taxes attributable to gambling winnings. (This is a GIL.)

October 17, 2014

Re: TAXPAYER  
Credit for Taxes Paid to Other States on Gambling Winnings

Dear Xxxx:

This is in response to your letter dated October 9, 2014 in which you request a legal tax ruling regarding the treatment of gambling winnings. The Department's 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 letter and the information provided require that we respond with a General Information Letter.

Your letter states as follows:

Per TAXPAYER 2's instructions, I am forwarding you all the correspondence in regards to this taxpayer. At issue is the credit for taxes paid to Indiana on gambling winnings of an Illinois resident.

Your letter dated MONTH XX, 20XX, to TAXPAYER 2 states:

This letter is a follow up, as requested by yourself, in regards to the specific questions I have on this account. Your letter dated July 15, 2014 (which by the way, was never received by USMail, I downloaded it from MyTax) states in the second paragraph that "The state of Illinois does not allow credits for taxes paid on gambling winnings to another state." Again, I have never heard of this, and I have been an Illinois tax preparer for over 28 years.

You directed me to two statutes which you claim support this statement.

- The first is 35 ILCS 5/303. I have printed this statute and enclosed it in this packet. It appears to me that this statute specifically deals with income earned by persons OTHER than a resident of the state. The TAXPAYER 1's are residents of Illinois.
- The second statute you directed to me was Section 301(c)(2). I have printed this statute and enclosed it in this packet. I can't discern how this section applies to the taxpayers since they are full time residents of Illinois.

The Department's file for these taxpayers indicates that they reported \$XX,XXX in Column A of Line 15 of the Schedule CR, Credit for Tax Paid to Other States, and \$XXX,XXX in Column B of Line 15. Column A is supposed to include the amount of "other income" reported on Line 21 of the federal Form 1040, and Column B is supposed to report the portion of the amount in Column A that is sourced outside of Illinois using Illinois' allocation and apportionment rules, as explained below. The Department adjusted the taxpayer's return by reducing the amount in Column B to the \$XX,XXX amount shown in Column A, pending receipt of an explanation from the taxpayers regarding this item, as noted in the letter to the taxpayers dated MONTH 2 XX, 20XX. The documents you have provided indicate that the \$XX,XXX is comprised of \$XXX,XXX in gambling winnings, minus a net operating loss deduction of \$XXX,XXX, all of which resulted from losses incurred by a Subchapter S corporation that apportioned all of its income and loss to Illinois.

### **RESPONSE**

Section 601(b)(3) of the Illinois Income Tax Act (35 ILCS 5/601) allows residents to claim a credit for income taxes paid to other states. That section also provides:

For taxable years ending on or after December 31, 2009, the credit provided under this paragraph for tax paid to other states shall not exceed that amount which bears the same ratio to the tax imposed by . . . this Act as the amount of the taxpayer's base income that would be allocated or apportioned to other states if all other states had adopted the provisions in Article 3 of this Act bears to the taxpayer's total base income subject to tax by this State for the taxable year.

The Schedule CR implements this limitation by having the taxpayer list items of income from all sources in Column A; write the amount that is sourced to other states using Illinois' sourcing rules in Article 3 of the Illinois Income Tax Act in Column B of each line; then writing the total income and total non-Illinois sourced income on Line 42; and computing the fraction of income that is from non-Illinois sources. This fraction, multiplied by the taxpayer's Illinois income tax liability before credits, yields the limit on the credit allowed for taxes paid to other states.

In Article 3 of the Illinois Income Tax Act, Section 301(c)(2) (35 ILCS 5/302) provides:

Any item of income or deduction which was taken into account in the computation of base income for the taxable year by any person other than a resident and which is not otherwise specifically allocated or apportioned pursuant to Section 302, 303 or 304 . . . in the case of an individual, trust or estate, shall not be allocated to this State.

Except in the case of a professional gambler, who would apportion his or her gambling winnings as business income under the provisions of Section 304 of the Illinois Income Tax Act (35 ILCS 5/304), there is no provision in Sections 302, 303 or 304 that would allocate gambling winnings of a nonresident to Illinois. Thus, if all states used Illinois' rules for sourcing income, no other state would tax gambling winnings of a nonresident gambler who is not a professional. Accordingly, pursuant to the provision in Section 601(b)(3) quoted above, there is no provision in the instructions to the Schedule CR that allows gambling winnings of a nonprofessional

gambler to be included in Column B of any line. For the vast majority of residents who are taxed by another state only on gambling winnings, this means that the total income sourced to other states under Illinois' rules is zero, and the credit allowed under Section 601(b)(3) is zero.

In this case, because none of the taxpayers' gambling winnings should be shown as sourced outside of Illinois in Column B of Line 15 of the Schedule CR, the amount of the taxpayers' income sourced outside Illinois in Column B of Line 42 of the Schedule CR should be zero, and no credit for taxes paid to other states is allowed.

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 have any further questions, you may contact me at (217) 524-3951.

Sincerely,

Paul S. Caselton  
Deputy General Counsel - Income Tax  
Illinois Department of Revenue