

Gain from sale of stock is not allocated to Illinois where taxpayer is a nonresident and gain is nonbusiness income. (This is a GIL)

November 23, 2016

Re: Illinois income tax

Dear Xxxxx:

This is in response to your letter dated October 24, 2016 in which you request a letter ruling. The nature of your request and the information provided 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 2 Ill. Adm. Code § 1200.120(b) and (c), which may be accessed from the Department's web site at www.tax.illinois.gov.

Your letter states as follows:

I am writing to request a legal ruling on a question I have about the treatment of a capital gain my wife had for Illinois income tax. I have sent my question over the internet. The incident number is #####. I received a response from NAME in the Taxpayer Assistance Division. I am satisfied with her response, but would like to have it confirmed by your office.

My wife and I are both residents of the state of STATE. My wife grew up in Illinois, but left it many years ago. We are required to file an Illinois income tax return because she owns a one-half interest in a farm located near the town of CITY, Illinois which is rented to a tenant farmer. She receives a share of the crop as rent.

She has sold her share of the crops each year through COMPANY located in the town of CITY, Illinois. Since she did business with this company, she received patronage dividends from it. Some of these were in cash and some were in the form of preferred stock and stock credits. These were all included in her farm rental income on both the federal and Illinois income tax returns. My wife's stock in this company was acquired as patronage dividends.

In May of this year, COMPANY was merged with COMPANY 1. As part of the merger, the COMPANY stockholders were bought out for an amount much larger than the tax basis of this stock. This resulted in a large capital gain for us.

This gain is taxable for the federal income tax, but we are not sure if it is taxable for the Illinois income tax since we are not residents of Illinois. In the Schedule NR instructions for 2015, it says that gains from the sales of intangibles are not taxed by Illinois. It seems like shares of stock would be intangibles. Please let us know about this.

RULING

Section 201(a) of the Illinois Income Tax Act ("IITA" ; 35 ILCS 5/201) imposes a tax, measured by "net income," upon every individual, corporation, trust and estate for the privilege of earning or receiving income in or as a resident of this State. A nonresident individual is liable for Illinois income tax under Section 201 if he or she derives "net income" as defined under IITA Section 202. IITA Section 202 defines net income as that portion of the taxpayer's "base income" as defined in Section 203, which is allocated or apportioned to Illinois under the provisions of Article 3 of the IITA, less certain deductions.

Base income that constitutes nonbusiness income is allocated to Illinois under IITA Sections 301(c) and 303. IITA Section 301(c)(1) states:

In general. 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 referred to in Section 302, 303, or 304 (relating to compensation, nonbusiness income and business income, respectively) shall be allocated to this State only to the extent provided by such section.

IITA Section 303(b)(3) states:

Capital gains and losses from sales or exchanges of intangible personal property are allocable to this State if the taxpayer had its commercial domicile in this State at the time of such sale or exchange.

Consistent with these provisions, the Instructions to Line 11 of the Schedule NR state, "Nonbusiness capital gains or losses that resulted from your sale of intangibles are not taxed by Illinois."

In this case, based on the information provided, it appears that the gain from exchange of your shares of COMPANY. is nonbusiness income. Accordingly, such gain is not allocated to Illinois, and therefore is not taxed by Illinois.

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 questions regarding this GIL you may contact Legal Services at (217) 782-2844. If you have further questions related to Illinois income tax laws, visit our website at www.tax.illinois.gov or contact the Department's Taxpayer Information Division at (217) 782-3336.

Sincerely,

Brian L. Stocker
Associate Counsel (Income Tax)