

Alimony Deduction Reduces Credit Limitation Under IITA Section 601(b)(3)

January 27, 2020

Re: Illinois income tax

Dear Xxxx:

This is in response to your letter received April 29, 2019, in which you request information regarding Illinois income tax. 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](http://www.tax.illinois.gov).

Your letter states as follows:

On behalf of the above-named Taxpayer, we hereby request explanation for Return Correction Notice (copy enclosed) reducing Taxpayer's credit for income tax paid to STATE from \$\$\$ to \$\$\$.

Taxpayer is a resident of Illinois who earned \$\$\$ from the State of STATE during calendar year 20XX. Accordingly, Taxpayer paid STATE income tax on such amount as reflected on her STATE Nonresident Personal Income Tax Return (copy enclosed). Taxpayer paid alimony to her former husband, amounting to \$\$\$ in calendar year 20XX. Taxpayer's former husband is also a resident of Illinois. Accordingly, STATE did not allow a deduction for the alimony paid in Illinois against the nonresident income earned in such state.

The Return Correction Notice recomputed Taxpayer's STATE credit on 20XX Schedule CR by reducing STATE income for % of the alimony paid to Taxpayer's ex-husband and, accordingly, reflected only \$\$\$ of income as double taxed rather than the correct \$\$\$.

Upon discussing this matter with a representative of the Illinois Department of Revenue, we were told that the "instructions to the form" requires such a reduction. However, it does not appear reasonable that the alimony paid would be considered % from the STATE based income when such amount is only approximately % of the total income reported by Taxpayer. It appears more reasonable that alimony paid to an Illinois resident would be deductible against Illinois income and to charged to STATE income for determining double taxation.

Taxpayer respectfully requests an opinion for your office regarding the above. We are assisting the Taxpayer in making this request as the third-party designee reflected on Taxpayer's 20XX Form IL-1040.

**RULING**

Section 601(b)(3) of the Illinois Income Tax Act ("IITA"; 35 ILCS 5/601(b)(3)) provides Illinois residents a credit for income taxes paid to other states, as follows:

The aggregate amount of tax which is imposed upon or measured by income and which is paid by a resident for a taxable year to another state or states on income which is also subject to the

tax imposed by subsections 201(a) and (b) of this Act shall be credited against the tax imposed by subsections 201(a) and (b) otherwise due under this Act for such taxable year.

...

*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 subsections 201(a) and (b) otherwise due under 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 credit provided by this paragraph shall not be allowed if any creditable tax was deducted in determining base income for the taxable year. Any person claiming such credit shall attach a statement in support thereof and shall notify the Director of any refund or reductions in the amount of tax claimed as a credit hereunder all in such manner and at such time as the Department shall by regulations prescribe (Emphasis added).*

The italicized language above limits the amount of tax paid to other states that may otherwise qualify for the credit. That limitation is determined by multiplying the amount of Illinois income tax otherwise imposed for the taxable year by a fraction, the numerator of which is the amount of the taxpayer's base income that would be allocated or apportioned outside of Illinois assuming that all other states adopted Illinois' allocation and apportionment rules as set forth in Article 3 of the IITA, and the denominator of which is the taxpayer's total base income for the taxable year. Under this provision, only income that would have been taxable by other states applying Illinois law is included in the numerator of the fraction thereby increasing the credit limitation.

Under Article 3 of the IITA, nonresidents are allowed to allocate to Illinois 100 percent of the deduction for alimony paid. See *Lunding v. New York Tax Appeals Tribunal*, 522 U.S. 287, 118 S.Ct. 766 (1998). As a result, if STATE had adopted Article 3 of the IITA, the taxpayer's alimony deduction would have been allowed in full. Accordingly, the alimony deduction must be allocated to STATE in computing the numerator of the taxpayer's limitation fraction.

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 regarding this letter, you may contact me at (217) 782-2844.

Sincerely,

Brian L. Stocker  
Associate Counsel (Income Tax)