> If a taxpayer's total base income is greater than their Illinois income, the taxpayer must prorate their standard exemption to account for income from sources outside of Illinois. (This is a GIL)

November 23, 2021

Re: Illinois income tax

Dear NAME:

This is in response to your letter dated February 16, 2021, in which you requested a Private Letter Ruling. 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.

Your letter states as follows:

> This letter is to request that the Illinois Department of Revenue ("Department") issue Taxpayer (as defined herein) a Private Letter Ruling ("PLR") for the full amount of Illinois exemption allowance pursuant to 2 Ill. Admin. Code§ 1200.110, and in accordance with the advice of the IL DOR Taxpayer Assistance - Call Center.
>
> A. Statement of Facts
>
> 1. Taxpayer Information:
>
> a. This request for a Private Letter Ruling (PLR) is being made by the taxpayer INDIVIDUAL, NAME SSN /TIN XXX-XX-XXXX (herein "Taxpayer").
>
> b. This Private Letter Ruling ("PLR") is not requested with regard to hypothetical or alternative proposed transactions.
>
> c. This PLR is requested to determine the fairness, legality and constitutionality of tax consequences of IL Department of Revenue rules pertaining to "non-resident apportioned standard exemptions". (Title 86 Part 100 Section 100.2055 Standard Exemption).
>
> d. The INDIVIDUAL Taxpayer is not currently under audit or under any other type of litigation with the IL Department of Revenue on this matter or any other Tax matter.
>
> e. The IL Department of Revenue has not previously ruled regarding this matter for the INDIVIDUAL taxpayer. In addition, the taxpayer has not submitted any similar request on this same issue previously with the IL Department of Revenue, other than making inquiries regarding this issue (by email) to the DOR.

f. Taxpayer requests that his name, address, SSN, any other personally identifying information (including the Taxpayer email address and phone number), and any attached Exhibits be deleted from this PLR prior to making it public information.

g. Taxpayer is not aware of any authority contrary to the authorities cited herein.

2. Description of Taxpayer's Tax Situation/ Description of Issue:

Taxpayer is a non-resident individual taxpayer and beneficiary of a Trust Estate (herein "Trust") established in the State of Illinois. This Trust is approximately AMOUNT acres of income generating farmland located in COUNTY Illinois. The beneficiaries (Taxpayer and Taxpayer's sibling) equally receive ½ of the annual income from the Estate Trust. Taxpayer, as a non-resident, is subject to the Illinois "pass through taxation" on such beneficiary's share of Trust income.

As a non-resident taxpayer, Taxpayer is required to file form IL 1040-NR as part of Taxpayer's annual Illinois tax return. However, although Taxpayer, being a non-resident, is NOT required to file an Illinois Tax return, Taxpayer is permitted to file a Illinois tax return to claim any refund that may be due. As a non-resident, Taxpayer IS subject to mandatory pass through tax withholding.

Section 100.2055 Standard Exemption (UTA Section 204), in relevant part, states:

a) In computing net income, there shall be allowed as an exemption the sum of the basic amounts provided under subsections (b) and (c) plus the additional exemptions allowed under subsection (d), multiplied by a fraction, the numerator of which is the amount of the taxpayer's base income allocable to this State for the taxable year and the denominator of which is the taxpayer's total base income for the taxable year. (IITA Section 204(a)).

b) Each taxpayer shall be allowed an exemption in the basic amount equal to:

1) in the case of an individual:

A) for taxable years ending prior to December 31, 1998, $1,000; (IITA Section 204(b)).

B) for taxable years ending on or after December 31, 1998 and prior to December 31, 1999, $1,300; (IITA Section 204(b)(1)).

C) for taxable years ending on or after December 31, 1999 and prior to December 31, 2000, $1,650;(11TA Section 204(b)(2)).

D) for taxable years ending on or after December 31, 2000, and prior to December 31, 2012, $2,000; (IITA Section 204(b)(3)).

E) for taxable years ending on or after December 31, 2012 and prior to December 31, 2013 and for taxable years beginning on or after June 1, 2017, $2,050; (IITA Section 204(b)(4)).

F) for taxable years ending on or after December 31, 2013 and on or before December 31, 2023, $2,050 plus the cost-of-living adjustment under subsection (e); and (IITA Section 204(b)(5)).

G) for taxable years ending after December 31, 2023, zero.

2) for taxable years ending on or after December 31, 1992, an individual taxpayer whose Illinois base income exceeds the basic amount and who is claimed as a dependent on another person's tax return under the Internal Revenue Code shall not be allowed any basic amount under this subsection (b).(IITA Section 204(b)), (*Source: Amended at 44 Ill. Reg. 2845, effective January 30, 2020*).

The foregoing regulation(s) do not indicate that a non-resident taxpayer is not entitled to the full exemption allowance. Indeed according to the first paragraph in this regulation, all exemption allowances are to be computed in the same manner, regardless of the taxpayer's location or Illinois residency status:

a) In computing net income, there shall be allowed as an exemption the sum of the basic amounts provided under subsections (b) and (c) plus the additional exemptions allowed under subsection (d), multiplied by a fraction, the numerator of which is the amount of the taxpayer's base income allocable to this State for the taxable year and the denominator of which is the taxpayer's total base income for the taxable year. (IITA Section 204(a)).

**Illinois Individual Tax Return Form 1040 and Schedule NR**

Line by line:

The Illinois form 1040 and Schedule NR computations do not comply with the foregoing. "Step 4: Exemptions· on the Form 1040 instructs all filers to list the full deduction allowance amount (line 10a). That full exemption allowance amount, along with other exemptions amounts as indicated on lines 1Ob and 10c are then added and the total is reflected on line 10.

Line 11 then instructs residents to subtract the exemption allowance (a minimum of the full allowance amount) from Line 9 (being the resident filer's "Illinois Base Income"). Line 11 instructs non-residents to enter the exemption allowance amount as calculated on schedule NR (Step 5 Tax Calculations).

It is the Schedule NR Step 5 calculations which essentially cause non-resident filers to have a reduced exemption allowance amount which subsequently (and unfairly, and perhaps unconstitutionally) results in higher income tax amounts due to the State of Illinois.

Line by line:

Line 46 is the base income for tax purposes for a non-resident filer.

Line 47 is the non-resident filer's Federal AGI amount. As a non-resident of Illinois, and receiving taxable income from source(s) both in and outside Illinois, this amount will almost always be higher than the amount on line 46.

Line 48 is the product of dividing the filer's base Illinois income by the filer's Federal AGI (dividing line 46 by line 47). This results in the fraction mentioned in paragraph a) as noted previously.

Line 49 is the full exemption allowance amount.

Line 50 is the product of multiplying line 49 by the decimal on line 48. This results in an exemption allowance which is LESS than the full allowance amount which nearly all resident filers receive. Thus, when subtracting the exemption allowance from the Illinois base income shown on line 46, the result is a higher amount of taxable income taxed at the flat rate of 4.95% applicable to all filers.

**Analysis:**

Pursuant to Section 100.2055 Standard Exemption (IITA Section 204), all taxpayers, both resident and non-resident filers, are subject to the exemption allowance rules. Paragraph a) computations, where applicable, apply to nearly all Illinois tax return filers. Non-resident tax return filers, particularly Taxpayer, pay additional Illinois income tax, based on computations using revenues received from sources outside the State of Illinois. Such additional revenues for Taxpayer include: interest earned on investments, canceled debt "income· (which is not actual income, but income for taxation purposes only), and rental property rent receipts (for rental property located in Taxpayer's residency State of STATE). Taxpayer pays more as a non-resident, on the same base income and resulting net taxable income, than a resident taxpayer whose base and net taxable

Illinois income is the same.   The Illinois DOR tax return forms (1040 and Schedule NR) do not figure exemption allowance fractions or reductions for residents, but do for non-residents. Taxpayer is “penalized” for the income received from sources outside Illinois, and is essentially taxed on a portion of such income, based on reductions in the exemption allowance which are applied directly due to such income.

**Computations & Residency Status Comparison (2020 estimated amounts)**

(Figures Removed)

As clearly shown above, a Illinois resident receives the full exemption allowance, regardless of the Illinois base income amount, and regardless of where such income is earned; whereas Taxpayer's exemption allowance is reduced, based solely on income received outside Illinois, and which income is not subject to Illinois income taxation, resulting in an increased net Illinois taxable income amount and corresponding higher amount of income tax payable.

In fact, when one analyzes the Illinois tax forms, the Schedule NR line 47 amount includes the same amount of Illinois' portion of taxable interest as contained on line 6, column 8 of that same form.   That I to say, the column 8 amount is also included in the column A amount as shown on the taxpayer(s)' federal 1040 return. In other words, that interest income is in fact "taxed" twice.

**Additional Information and Guidance**

Taxpayers Bill of Rights (20 ILCS 2520/) Taxpayers' Bill of Rights Act.

(20 ILCS 2520/4) (from Ch. 120, par. 2304) Sec. 4. Department responsibilities. The Department of Revenue shall have the following powers and duties to protect the rights of taxpayers:

*(a) To furnish each taxpayer with a written statement of rights whenever such taxpayer receives a protestable notice, a bill, <u>a claim denial or reduction regarding any tax</u>. Such statement shall explain the rights of such person and the obligations of the Department during the audit, appeals, <u>refund and collections processes</u>.*

The exemption allowance is a “claim” on an individual tax return, the same as any other income offsetting credit, reduction, or deduction. The Illinois individual tax return forms (1040 and Schedule NR) computations do not provide any notice that the exemption allowance is reduced for non-resident filers. Indeed the IL 1040 form makes it appear as though a non-resident filer in fact receives the full exemption allowance amount, when in fact he or she may not or does not.

IRS Publication 1 Right 10: The Right to a Fair and Just Tax System.
*Taxpayers have the right to expect the tax system to consider facts and circumstances that might affect their underlying liabilities, ability to pay, or ability to provide information timely. Taxpayers have the right to receive assistance from the Taxpayer Advocate Service if they are experiencing financial difficulty or if the IRS has not resolved their tax issues properly and timely through its normal channels.*

Although the foregoing taxpayer right is that of the IRS and not a specifically stated right of the Illinois DOR or the State of Illinois, the concept of a Fair and Just tax system is contained in the Illinois Constitution, Article IX, Sections 2 and 3:

SECTION 2. NON-PROPERTY TAXES - CLASSIFICATION, EXEMPTIONS, DEDUCTIONS, ALLOWANCES AND CREDITS

*In any law classifying the subjects or objects of non-property taxes or fees, the classes shall be reasonable and the subjects and objects within each class shall be taxed uniformly. Exemptions, deductions, credits, refunds and other allowances shall be reasonable.*
*(Source: Illinois Constitution.)*

Note: Income may very "Well be considered an "object". It is certainly "subject" to, and the "subject” of, taxation.

SECTION 3. LIMITATIONS ON INCOME TAXATION

*(a) A tax on or measured by income shall be at a non-graduated rate. At any one time there may be no more than one such tax imposed by the State for State purposes on individuals and one such tax so imposed on corporations. In any such tax imposed upon corporations the rate shall not exceed the rate imposed on individuals by more than a ratio of B to 5.*

*(b) Laws imposing taxes on or measured by income may adopt by reference provisions of the laws and regulations of the United States, as they then exist or thereafter may be changed, for the purpose of arriving at the amount of income upon which the tax is imposed.*
*(Source: Illinois Constitution.)*

The laws and regulations of the IRS do not contain any such "non-resident apportioned standard exemptions" which are applicable to U.S. citizens who are residents of varying States.

**United States Constitutional Impacts and Concerns; Case law**

Federal constitutional rules generally require non-residents to be taxed as favorably as residents. Three constitutional provisions, the Privileges and Immunities Clause, the Commerce Clause, and the Equal Protection Clause, may invalidate differential tax rules for nonresidents. In addition, a nonresident must have sufficient contact with the state to be subject to tax under the due process clause--e.g., a state's income tax can only apply to a nonresident's income from in-state sources. The Privileges and Immunities Clause provides The citizen of each State shall be entitled to all of the Privileges and Immunities of Citizens of the several States. U.S. Const. Art. IV § 2. The Privilege and Immunities Clause generally prohibits a state from imposing higher tax rates or taxes on nonresidents than it imposes on residents. Although its language refers to "citizens," the Supreme Court has held that provisions discriminating against nonresidents also discriminate against citizens of other states.

The clause does not absolutely prohibit discrimination against nonresidents; it permits states to provide different rules for nonresidents if there is a "valid independent reason for" the treatment. Also, it only applies to interests that are "fundamental," i.e., bear on "the vitality of the Nation as a single entity." A fee or tax on pursuing a trade or business is covered. Toomer v. Witsell, 334 U.S. 385, 395 (1948). Differential fees on nonresidents for recreational hunting and fishing are not. Baldwin v. Fish and Game Commission of Montana, 436 U.S. 371 (1978). *In general, differential income or property tax rules are covered, since they affect the right to "reside in" or '10 pursue trade. agriculture. [or1 professional pursuits."* Corporations are not protected by the clause, since they are not considered "citizens." Examples of laws held to violate the privileges and immunities clause include: •Denial to nonresidents of personal deductions under the individual income tax. Travis v. Yale & Towne Mfg. Co., 252 U.S. 60 (1920} (personal exemption): Lunding v. N.Y. Tax Appeals Tribune, 522 U.S. 287(1998) (alimony deduction). [*MN House Research Department September 2018*]

**Requested Ruling:**

Based on all of the above, Taxpayer requests that the Department rule that Taxpayer is, pursuant to Section 100.2055 Standard Exemption (IITA Section 204), and in compliance with the fair tax system concept, and various provisions of the U.S. Constitution, entitled to the same tax exemption allowance treatment and computations as are used for and with Illinois resident tax return filers, using no decimal or fractional computations. Taxpayer additionally request the IL DOR refigure Taxpayer's YEAR1 and YEAR2 returns using the full exemption allowance amount, as granted to Illinois residents, and refund the difference of what was already refunded and what is due, with interest, to Taxpayer. If the Department proposes to rule other than as requested herein, Taxpayer respectfully requests the Department to rule that Section 100.2055 Standard Exemption (IITA Section 204) applies equally to all tax filers, resident and non-resident alike, and that the same exemption allowance reductions apply to residents as they are currently applied only to non-residents. And that the same be specifically indicated in the Department's written rule(s) regarding exemption allowance entitlement and computations, and the appropriate tax forms be updated/revised accordingly.

Prior to publication Taxpayer respectfully requests that the Department delete the name and any and all personal identifying information about the Taxpayer contained herein.

Thank you for your most valuable time, consideration of, and attention to, this request. I look forward to your response. In the interim, should you have any questions or concerns or should you require additional information, please do not hesitate to let me know.

## RULING

A resident or nonresident is liable for Illinois income tax under Section 201 of the Illinois Income Tax Act ("IITA" 35 ILCS 5/201) if they compute "net income" as defined under IITA Section 202. IITA Section 202 defines net income as "that portion of his base income for such year which is allocable to this State under the provisions of Article 3, less the standard exemption allowed by Section 204."

Section 204(a) of the IITA states as follows:

> (a) Allowance of exemption. In computing net income under this Act, there shall be allowed as an exemption the sum of the amounts determined under subsections (b), (c) and (d), multiplied by a fraction the numerator of which is the amount of the taxpayer's base income allocable to this State for the taxable year and the denominator of which is the taxpayer's total base income for the taxable year.

86 Ill. Adm. Code 100.2055, cited in your letter, directly cites to Section 204(a) of the IITA. The IL-1040, IL-1040 Schedule-NR and associated instructions reflect this statutory requirement. According to Section 204(a) to the IITA, the standard exemption is calculated by multiplying the standard exemption determined under Section 204(b), (c) and (d) by a fraction which reflects the ratio of "Illinois income" to total base income. Consequently, if a taxpayer's total base income is greater than their Illinois income, the taxpayer must prorate their standard exemption to account for income from sources outside of Illinois. Unless and until Section 204(a) is ruled unconstitutional or is amended by the General Assembly, the Department is required to implement the law as written and may not amend its regulations and forms in a manner contrary to the statute.

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,

Michael D. Mankowski
Associate Counsel - Income Tax

cc: Daily File
Correspondence file: