IT-21-0011 11/23/2021 PENSIONS – FOREIGN PENSIONS

> Some German pensions governed by U.S tax treaty with Germany may qualify for subtraction modification found in IITA Section 203(a)(2)(L). (This is a GIL.)

November 23, 2021

Re: Illinois Income Tax

Dear NAME:

This is in response to your letter dated March 12, 2021, 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.

Your letter states as follows:

> I was directed to this office regarding deduction of foreign pensions. I had submitted my parents IL1040 to their local office and was told by the clerk that foreign pensions may be tax deductible on Illinois taxes. I have only been able to verify that Canadian pensions are tax deductible but my parents receive a government pension from Germany.
>
> I would like to get a definitive answer as we have not been deducting their German pension only their US pension.

RULING

Section 203(a)(2)(F) provides the following deduction in the computation of an individual's Illinois base income:

> An amount equal to all amounts included in such total pursuant to the provisions of Sections 402(a), 402(c), 403(a), 403(b), 406(a), 407(a), and 408 of the Internal Revenue Code, or included in such total as distributions under the provisions of any retirement or disability plan for employees of any governmental agency or unit, or retirement payments to retired partners, which payments are excluded in computing net earnings from self employment by Section 1402 of the Internal Revenue Code and regulations adopted pursuant thereto.

Section 402 of the Internal Revenue Code deals with distributions from employee trusts exempt under Section 401(a) of the Internal Revenue Code, which provides an exemption for certain employee trusts "created or organized in the United States."

Section 403(a) of the Internal Revenue Code deals with annuities described in Section 404(a)(2) of the Internal Revenue Code, which describes certain annuities purchased by employee trusts exempt under Section 401(a) of the Internal Revenue Code.

Section 403(b) of the Internal Revenue Code deals with annuities for employees of exempt organizations.

Sections 406 and 407 of the Internal Revenue Code deal with employee benefit plans under Section 401 that cover overseas employees of affiliates of the employer that created the plan.

Section 408 of the Internal Revenue Code deals with individual retirement accounts.

Section 203(a)(2)(L) provides the following deduction in the computation of an individual's Illinois base income:

> For taxable years ending after December 31, 1983, an amount equal to all social security benefits and railroad retirement benefits included in such total pursuant to Sections 72(r) and 86 of the Internal Revenue Code;

Paragraph 5 of Article VIII of the Protocol Amending the Convention between the United States of America and the Federal Republic of Germany Signed at Berlin on June 1, 2006 (the "Protocol"), states as follows:

> 5. Social security benefits paid under the social security legislation of a Contracting State and other public pensions (not dealt with in Article 19 (Government Service)) paid by a Contracting State to a resident of the other Contracting State shall be taxable only in that other Contracting State. In applying the preceding sentence, that other Contracting State shall treat such benefit or pension as though it were a social security benefit paid under the social security legislation of that other Contracting State."

Paragraphs 2 through 5 of Article 19 of the Protocol, state as follows:

> 2. a) Notwithstanding the provisions of paragraph 1, pensions and other similar remuneration paid by, or out of funds created by, a Contracting State or a political subdivision, local authority or an instrumentality thereof to an individual in respect of services rendered to that State or subdivision, authority or instrumentality shall be taxable only in that State.
> b) However, such pensions and other remuneration shall be taxable only in the other Contracting State if the individual is a
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> aa) resident of, and a national of, that State; or

bb) the pension is not subject to tax in the Contracting State for which the services were performed because the services were performed entirely in the other Contracting State.

3. Pensions, annuities, and other amounts paid by one of the Contracting States or by a juridical person organized under the public laws of that State as compensation for an injury or damage sustained as a result of hostilities or political persecution shall be exempt from tax by the other State.

4. The provisions of Articles 15 (Dependent Personal Services), 16 (Directors' Fees), 17 (Artistes and Athletes), and 18 (Pensions, Annuities, Alimony, Child Support, and Social Security) shall apply to salaries, wages and other similar remuneration, and to pensions, in respect of services rendered in connection with a business carried on by a Contracting State or by a political subdivision, local authority or an instrumentality thereof.

5. In this Article, the term "instrumentality" means any agent or entity created or organized by a Contracting State, one of its states or a political subdivision or local authority thereof in order to carry out functions of a governmental nature which is specified and agreed to in letters exchanged between the competent authorities of the Contracting States."

The Department of the Treasury Technical Explanation of the Protocol Signed at Berlin on June 1, 2006 Amending the Convention between United States of America and the Federal Republic of Germany ("Technical Explanation"), states, in part:

> In applying its tax, the residence country will treat the benefit as though it were a benefit paid to a resident under its own social security system. Thus, for example, if a U.S. resident receives a German social security benefit, he would include only one half of the benefit or such other portion as he would if the benefit had been a U.S. social security or railroad retirement benefit.

Your letter indicates that your parents received government pensions from Germany. The letter does not specify the form of the "government pension" your parents receive or if they both receive the same type of pension. The Protocol and the Technical Explanation reference multiple types of pensions. Therefore, a definitive answer cannot be provided without a specific description of the government pensions at issue.

The lack of detail notwithstanding, the Department can provide further information with regards to pensions governed by Paragraph 5 of Article VIII of the Protocol. The provisions referenced in IITA Section 203(a)(2)(F) do not appear to apply to a Paragraph 5 of Article VIII pension, as a result, such pension income would therefore not qualify for subtraction under IITA Section 203(a)(2)(F).

According to the Protocol, German pensions governed by Paragraph 5 of Article VIII received by a U.S. resident shall be treated as a U.S. social security benefit, and therefore, it appears as if such pension income would be qualify for the subtraction under IITA Section 203(a)(2)(L).

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: