IT-23-0006-GIL 05/31/2023 SUBTRACTIONS

Retirement income, including lump sum payment, is eligible for subtraction modification under Section 203(a)(2)(F) of the IITA if it is included in federal adjusted gross income pursuant to the provisions of the Internal Revenue Code cited in Section 203(a)(2)(F).

May 31, 2023

NAME/ADDRESS

Dear NAME:

This letter is in response to your letter dated March 20, 2023, in which you requested information. The Department issues two types of letter rulings. Private Letter Rulings ("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 on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at www.tax.illinois.gov to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

> The purpose of this letter is to request a Private Letter Ruling pursuant to I.A.C. Title 2, Chapter 1200.110 - Private Letter Rulings. The request seeks a determination as to whether termination/ retirement benefits scheduled over a number of years remain exempt from Illinois Income Tax per Section 1402 of Illinois Code if they are accelerated to a lump sum payment within a single tax year as the result of plan termination due to a change in control of the company due to a sale.
>
> **Statement of Facts:**
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> 1. The parties of interest with respect to this request are HUSBAND and WIFE, husband, and wife, who file jointly with the Illinois Department of Revenue.
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> 2. HUSBAND was formerly employed by COMPANY1 and retired as of MONTH DAY, YEAR.
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> 3. As part of the filings for tax year YEAR, which is currently being prepared, income from a qualified retirement benefit payment

from COMPANY1 is noted on line 5 of the IL-1040 and is not subject to Illinois Income Tax per Section 1402 of the Illinois Code.

Material Issues:

1. COMPANY1 has notified HUSBAND, retiree, that the company has entered into a Letter of Intent to sell the company.

2. COMPANY1 has notified HUSBAND, retiree, of their intent to terminate the retirement plan and accelerate plan payments due to the change in control /ownership.

3. COMPANY1 has notified HUSBAND, retiree, of their intent to pay all remaining scheduled payments with a single lump sum payment in calendar year YEAR.

4. COMPANY1 has cited U.S. Treas. Reg. I.409A-3(j)(4)(ix)(b) as the regulation that allows termination and liquidation and U.S. Treas. Reg.1.409A-1(c)(2) allowing payment acceleration due to a change in control event.

5. COMPANY1 has stated to HUSBAND, retiree, that the citation above in Item 4 substantiates that a lump sum payment of remaining scheduled benefits will remain exempt from Illinois Income Tax provided the plan is terminated and lump sum payment is made as a result of the change in ownership control due to a sale.

Subject of Request:

1. HUSBAND, retiree, is requesting a Private Letter Ruling from IDOR that a lump sum payment, if made in the YEAR tax year, of the remaining scheduled retirement benefits would remain exempt from Illinois Income Tax if the plan is terminated under the terms outlined.

Statements:

1. There is currently no pending audit or litigation associated with the taxpayer, HUSBAND.

2. The Department has not previously ruled on the same or a similar issue for the taxpayer, and taxpayer has not previously

submitted the same or similar issue to the Department and withdrew it before a letter ruling was issued.

3. COMPANY2 has stated that the accounting firm providing services to COMPANY1 has provided them with the opinions listed under 4 and 5 of Material Issues above. Taxpayer is not aware of any other authority supporting those views.

4. Taxpayer has not been able to locate any authority/authorities contrary to those views.

5. Taxpayer is not requesting any specific trade secret information be deleted from the publicly disseminated version of the Private Letter Ruling.

DEPARTMENT'S RESPONSE:

Section 203(a)(2)(F) of the Illinois Income Tax Act ("IITA", 35 ILCS 5/203(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 402(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.

In paragraph 3 of your Statement of Facts, you state that "…income from a qualified retirement benefit payment from COMPANY1 is noted on line 5 of the IL-1040 and is not subject to Illinois Income Tax per Section 1402 of the Illinois Code." Section 1402 of the Illinois Income Tax Act, 35 ILCS 5/1402, addresses the Department's notice requirements and does not appear to apply to the treatment of retirement income. In paragraph 4 of your Material Issues section, you refer to U.S. Treas. Reg. l.409A-3(j)(4)(ix)(b) and U.S. Treas. Reg.1.409A-1(c)(2) which appear to apply to nonqualified deferred compensation plans. Based on the information that you have provided, it is unclear whether you are a member of a qualified or nonqualified plan or if any of the provisions cited in Section 203(a)(2)(F) of the IITA apply to the retirement benefits at issue.

That being said, the Department follows the federal treatment when determining whether retirement income, whether it is made in a lump sum or as regular distributions, is subject to the subtraction modification under Section 203(a)(2)(F). If the income is included in gross income under Internal Revenue Code Sections 402(a), 402(c), 403(a), 403(b), 406(a), 407(a), or 408, or because it is a retirement payment to a retired partner, which is excluded in computing net earnings from self employment by Section 1402 of the Internal Revenue Code and regulations adopted pursuant thereto, then the income qualifies for the Section 203(a)(2)(F) deduction.

I hope this information is helpful. If you require additional information, please visit our website at www.tax.illinois.gov or contact the Department's Taxpayer Information Division at (217) 782-3336.

Very truly yours,

Michael D. Mankowski
Associate Counsel

MDM:CB-C