

IITA 709.5(a) Nonbusiness Annuity Income not Subject to Withholding. (This is a GIL.)

December 3, 2024

NAME

E-MAIL ADDRESS

Dear NAME:

This letter is in response to your letter dated February 23, 2024, 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:

Good morning. I was referred to you for some clarity regarding the non resident beneficiary of a trust's Form 1041. The only income the trust has every year is a distribution of interest income from a NON QUALIFIED annuity. An Illinois trust is the owner of the annuity. The annuity's annuitant is the NON RESIDENT 100% beneficiary on the federal Form 1041 Schedule K-1. In past years, the trust has been paying IL the 4.95% pass thru tax on behalf of the non resident. It has come to light that we might be doing this wrong and that interest income to non residents for "non business" annuity income is not taxed to non residents. My question is, "Should the trust pay IL pass through withholding on behalf of the non resident?" Thanks for your time. I appreciate it.

DEPARTMENT'S RESPONSE:

IITA Section 709.S(a) imposes a withholding obligation on partnerships, Subchapter S corporations, and trusts. The section provides, in part, as follows:

For each taxable year ending on or after December 31, 2008, every partnership (other than a publicly traded partnership under Section 7704 of the Internal Revenue Code or

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investment partnership), Subchapter S corporation, and trust must withhold from each nonresident partner, shareholder, or beneficiary ... an amount equal to the sum of (i) the share of business income of the partnership, Subchapter S corporation, or trust apportionable to Illinois plus (ii) for taxable years ending on or after December 31, 2014, the share of nonbusiness income of the partnership, Subchapter S corporation, or trust allocated to Illinois under Section 303 of this Act (other than an amount allocated to the commercial domicile of the taxpayer under Section 303 of this Act) that is distributable to that partner, shareholder, or beneficiary under Section 702 and 704 and Subchapter S of the Internal Revenue Code, whether or not distributed, (iii) multiplied by the applicable rates of tax for that partner, shareholder, or beneficiary under subsections (a) through (d) of Section 201 of this Act, and (iv) net of the share of any credit under Article 2 of this Act that is distributable by the partnership, Subchapter S corporation, or trust and allowable against the tax liability of that partner, shareholder, or beneficiary for a taxable year ending on or after December 31, 2014.

Your letter indicates that the trust's only source of income is an annuity, and that this income is nonbusiness income. Under IITA Section 301(c)(2), in the case of a nonresident, income from an annuity which is nonbusiness income shall not be allocated to Illinois. Therefore, a trust is not required under IITA Section 709.S(a) to withhold tax on such income. Note that under Department Regulations Section 100.7035(e), the trust may not claim a refund or credit for any overpayment of withholding due under subsection (a) with respect to any beneficiary. Instead, in the case of any overpayment, the remedy is for the beneficiary to file a timely claim for credit or refund for any amount withheld under subsection (a) with respect to it.

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,

Brian L. Stocker
Chairman, PLR Committee (Income Tax)

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