

Gambling winnings are sourced to the state of residence of the individual winner, so are not included in the computation of the cap on the credit allowed under IITA Section 601 (b)(3). (This is a GIL.)

May 23, 2019

Re: Illinois income tax

Dear Xxxx:

This is in response to your letter dated May 13, 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.

Your letter states as follows:

Supreme Court Rules that Two States May Not Tax the Same Income

My Husband, NAME, & I, NAME have tried several phone calls to your offices regarding living in Illinois & gambling winnings in Indiana to no avail.

For the years 2016 & 2017 both Indiana and Illinois Taxed our W2G winnings. Even our accountant has tried several calls & correspondence & again to no avail.

We hired an attorney from NAME Tax Group from STATE which they charged us \$\$\$ for what they call Phase I to look over all documents in December of 2018. They also claim they can't get any answers. Now last week they said they will need an additional \$\$\$ for Phase II to pursue further in getting our tax credits.

My husband and I do not have the funds to go forward with this. Our last hope is you can clear this up with your help, assistance & understanding. As you can see, we attempted to get a tax credit from STATE (See Enclosed)

Please, please help us with this matter. We can come into offices if it's easier. We have all documents needed.

Thank You,

RULING

Section 601(b)(3) of the Illinois Income Tax Act (35 ILCS 5/601) allows residents to claim a credit for income taxes paid to other states. That section also provides:

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 . . . 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 Schedule CR, Credit for Tax Paid to Other States, implements this limitation by having the taxpayer list items of income from all sources in Column A of Lines 1 through 39, and write the

amount that is sourced to other states using Illinois' sourcing rules in Article 3 of the Illinois Income Tax Act in Column B of each line, then writing the total income and total non-Illinois sourced income on Line 42, and computing the fraction of income that is from non-Illinois sources on Line 43. This fraction, multiplied by the taxpayer's Illinois income tax liability before credits, yields the limit on the credit allowed for taxes paid to other states.

In Article 3 of the Illinois Income Tax Act, Section 301(c)(2) (35 ILCS 5/301(c)(2)) provides:

Any item of income or deduction which was taken into account in the computation of base income for the taxable year by any person other than a resident and which is not otherwise specifically allocated or apportioned pursuant to Section 302, 303 or 304 . . . in the case of an individual, trust or estate, shall not be allocated to this State.

Except in the case of a professional gambler who reports gambling winnings and losses for federal purposes on Schedule C, *Profit or Loss From Business* and who would apportion his or her gambling winnings as business income under the provisions of Section 304 of the Illinois Income Tax Act (35 ILCS 5/304), there is no provision in Sections 302, 303 or 304 that would allocate gambling winnings of a nonresident to Illinois. Thus, if all states used Illinois' rules for sourcing income, no other state would tax gambling winnings of a nonresident gambler who is not a professional. Accordingly, pursuant to the provision in Section 601(b)(3) quoted above, there is no provision in the instructions to the Schedule CR that allows gambling winnings of a nonprofessional gambler to be included in Column B of any line. For the vast majority of residents who are taxed by another state only on gambling winnings, this means that the total income sourced to other states under Illinois' rules is zero, and the credit allowed under Section 601(b)(3) is zero.

Legislation that would change this result by providing that gambling winnings from Illinois gambling venues are sourced to Illinois under an amended Section 303 of the Illinois Income Tax Act has been introduced this year as House Bill 3590. As of May 21, 2019, it had passed both houses of the Illinois General Assembly. However, that bill would change the law only for tax years ending on or after December 31, 2019.

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