

IT-21-0010 11/23/2021 SUBTRACTIONS

Annuity and benefit funds created under the Illinois Pension Code are eligible for subtraction modification under Section 203(a)(2)(F) because the funds constitute "retirement or disability plan(s) for employees of any governmental agency or unit."

November 23, 2021

Re: Illinois income tax

Dear NAME:

This is in response to your letter received October 27, 2020, in which you request additional 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 write as attorney for TAXPAYER. (representative taxpayer) and over XXX annuitants of the City of CITY'S four annuity and benefit funds, Illinois Pension Code Articles 5,6, 8 and 11, for confirmation of the income tax exemption for healthcare subsidy payments, to annuitants under the 1983 and 1985 retiree healthcare statutes, and regardless whether for current or retrospective payments for past years.

In litigation for annuitants versus the City of CITY and the trustees of the four annuity and benefit funds, the Funds have been and will be making distribution of the statutory healthcare subsidies for the periods YEAR1-YEAR2 ,and going forward in current years, which the Funds had stopped paying, when the City terminated its retiree health plans.

There is uncertainty voiced as to whether the "bring current" distributions for the YEAR1-YEAR2 periods are exempt from Illinois income tax. All four Funds declare that they are treating these payments as follows:

1. Distributions to annuitants who participate in plans whose premiums are paid by their Funds (where the premium is "paid" by a deduction or charge against the person's annuity) will not be reported as federally taxed income; and so will not be included in the person's federal adjusted gross income, nor as part of the person's Illinois taxable income.

2. However, persons who, purchased health insurance through other plans, will receive the statutory subsidy, but will instead be issued a federal form 1099 or (not a form 1099-R) showing the distribution as income. Accordingly, those statements will result in the person being taxed under Illinois Income tax, unless the person knows to claim a deduction on their Illinois tax return.

While we know of no actual adverse authority, it seems clear to us that such distributions from an Illinois Pension Code annuity & benefit fund are exempt from Illinois income tax (35 ILCS 5/203(a)(2)(F)), regardless how it is paid to an annuitant, whether paid by annuity reduction, or check, direct deposit, or any other payment form.

We request this ruling because the four City of CITY Annuity and Benefit Funds refuse to report the direct subsidy payments or reimbursements as retirement payments exempt from Illinois income tax.

RULING

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. (Emphasis added)

Section 203(a)(2)(I) of the IITA 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 Section 111 of the Internal Revenue Code as a recovery of items previously deducted from adjusted gross income in the computation of taxable income;

Section 203(g) of the IITA states as follows:

Unless specifically provided otherwise, nothing in this Section shall permit the same item to be deducted more than once.

Your letter states that the distributions at issue will be made from four annuity and benefit funds authorized pursuant to Articles 5, 6, 8 and 11 of the Illinois Pension Code (40 ILCS 5 *et seq.*). If the distributions from the four funds are included in the taxpayers' federal adjusted gross income ("AGI") than they are eligible for the subtraction modification under Section 203(a)(2)(F) because the funds constitute "retirement or disability plan(s) for employees of any governmental agency or unit." Please be aware, however, that if a distribution also qualifies for the subtraction modification found in Section 203(a)(2)(I) for the recovery of items previously deducted from AGI, than according to Section 203(g) of the IITA, the distribution may not be deducted under both Sections 203(a)(2)(F) and (I).

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: