

Taxpayer must provide support from employer indicating in which state compensation is paid.

July 21, 2023

NAME

ADDRESS

Re:

Dear: NAME

This is in response to your letter dated July 21, 2023, in which you requested a letter ruling. 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 2 Ill. Adm. Code 1200.120(b) and (c), which may be found on the Department's web site at [www. tax.illinois.gov](http://www.tax.illinois.gov).

Your letter states as follows:

Hi, IL Tax Specialist NAME and Illinois Department of Revenue's Legal Services Bureau,

As per suggestion from the original email being replied from NAME, I had submitted the STATE tax return amend for year 2019 in July, 2022 to STATE Department of Revenue (AGENCY) for getting credit of double taxation paid to Illinois Department of Revenue (IDOR) and ODOR. The double taxation (mutual taxed) period is from August 13 to December 31, 2019. Please see the attached document "*Letter to STATE DOR for amend 07082022*". Eventually, I have received the replies from AGENCY in May 2023, as the attached "*STATE Letter ID #####*" stating that:

It appears that the income was not taxable to both STATE and Illinois. Once you moved to STATE and no longer physically worked in the State of Illinois that income earned in STATE would not be taxable to Illinois. Thus, the Illinois tax return should only have contained part of your income and not the full amount of income you earned during the 2019 year. Thus, you would not have mutually taxed income and not be eligible for the credit-for-taxes paid.

Please review the attached AGENCY notice. Also I had been working with my employer COMPANY regarding my 2019 W-2 state tax withholding to Illinois for the 2019 full year earned income. According to company policy as the attached "*Teleworking SOP final 2020*", my move to STATE is allowed as remote work but not as teleworking. Therefore, my COMPANY 2019 W-2 state tax withholding to Illinois for the 2019 full year earned income is correct and proper, and there is no way the W-2 can be updated. The double taxation (or mutual taxed) for the mentioned period is the fact. As per the AGENCY notice, please agree that my 2019 Illinois tax return should only have contained part of my 2019

earned income from COMPANY. Jan. 1 to August 12, 2019, and refund me the overpayment of \$\$\$\$.

Thanks,
NAME
PHONE

Looks like an email was sent back in August in reference to the situation. See below:

Mr. NAME

The email received regarding the issue of double taxation was forwarded to me for research and response.

I apologize that you were told to contact the Problems Resolution Division for assistance regarding the issue you are having. However, PRD is not able to assist you with this issue as PRD is required to follow the same procedures based on interpretation provided by our Legal Services Bureau per the laws and regulations governing this issue.

When this issue began for 2019, you had filed an Illinois schedule NR to allocate wages you received from your employer for the period of time that you worked in Illinois prior to moving to STATE. However, the W-2 issued by your employer allocated 100% of the wages to Illinois. That is why our processing division changed the schedule NR and assessed tax based on this allocation. They advised you to obtain a corrected W-2, or a letter from your employer showing the actual amount of wages allocated to Illinois for the period of time you were in Illinois. Per the notes on your account, it appears you attempted to get this information from your employer but the employer refused. PRD has no other solution to provide to you to correct this issue. As stated above, PRD is required to follow the same processes used by the processing division and may not offer any additional guidance regarding this issue.

As a part-year resident for 2019, you may not claim a credit for the non-resident portion of the income received. If your employer refuses to provide the requested information from the employer regarding the amount of wages earned while a resident of Illinois then our processing bureau is required to allocate the income shown as Illinois wages on the W-2. For 2019, the W-2 for the state is marked as Illinois, therefore, the wages reported in the state wages box of the W-2 are Illinois wages and required to be allocated to Illinois on the schedule NR as Illinois wages.

For the tax years 2020 and 2021, the Illinois returns were shown as non-resident, therefore, we would not be able to accept a correction or make an adjustment to allow credit for taxes paid to another state, as your return shows you were not a resident of Illinois for that year. Therefore, you are not entitled, as a non-resident of Illinois, to claim that credit. The employer provided W-2's showing Illinois wages for 2020 and 2021. As

explained above, these wages are allocable to Illinois based on the amount reported in the state wages box of the W-2 for those years.

The only solution I may offer is a solution that requires action by either your employer by providing corrected W-2's or a letter from them, or by filing amended returns with STATE to claim credit for taxes paid to other states. This is the only solution to your issue that I may offer.

However, you may contact the Illinois Department of Revenue's Legal Services Bureau for their opinion regarding your issue. Their telephone number is 217-792-7054. Their email address is rev.gco@illinois.gov.

Hello, IL Tax specialist,

Your email address is given by REV.TA-IIT@illinois.gov tax assistant after multiple emails of discussion with no final solution.

This is regarding to claim credit for tax paid to another state for my IL 2019 tax return.

As an Illinois resident for many years, I have moved to STATE since August 13, 2019, and worked remotely. That means I was an IL part-year resident in year 2019 and a nonresident after. However, my employer has been withholding state tax to Illinois on my all income (since then till now), according to its policy and my agreement. My 2019 IL tax return was originally filed by using IL NR form on which the Illinois portion (Column B) income was calculated as 61.5% of the whole year income based on the percentage for time period of Jan. 1 to August 12. On the other hand, I also filed STATE State tax return and paid state tax as a part-year-resident on income earned from Illinois for the period from August 13 to December 31, 2019, which is 38.5% of the whole year income.

Later on, my 2019 IL filed tax return was adjusted by your specialist to tax based on the whole year income, since it is considered as 100% earned and received from Illinois, like a full year resident.

In that case, could I use IL CR form (and report on IL 1040 form line 15) to claim credit for tax paid to STATE for tax year 2019? Also how about the following tax years 2020, 2021, and 2022?

Thanks,

NAME

RULING

RE: Credit for tax paid to another state

Dear NAME,

Section 304(a)(2)(B) of the Illinois Income Tax Act prescribes:

Compensation is paid in this State if:

- (i) The individual's service is performed entirely within this State;
- (ii) The individual's service is performed both within and without this State, but the service performed without this State is incidental to the individual's service performed within this State; or
- (iii) For tax years ending prior to December 31, 2020, some of the service is performed within this State and either the base of operations, or if there is no base of operations, the place from which the service is directed or controlled is within this State, or the base of operations or the place from which the service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in this State.

In order to support the allocation of your wages reported on the Schedule CR from your 2019 Form IL-1040 individual income tax return, you will need to provide a letter from your employer, on company letterhead, indicating that your base of operations from August 13, 2019 until December 31, 2019 was in STATE. Illinois did not draw a distinction between remote work or teleworking, as your employer seems to suggest, but instead focused on the base of operations, which was the same standard used for unemployment insurance contributions.

I would note that the statute of limitations on obtaining a refund of the \$\$\$\$ overpayment reported on the return will expire on October 15, 2023. You will need to file a 2019 Form IL-1040-X amended individual income tax return on or before that date in order to preserve your ability to obtain a refund.

I hope this information is helpful.

Sincerely,

NAME

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, you may contact me at (217) 782-2844.

Sincerely,

Brian Fliflet
Deputy General Counsel (Income Tax)

cc: Daily File
Correspondence file: