

Some UK pensions governed by U.S. tax treaty with the United Kingdom may qualify for the subtraction modification found in IITA Section 203(a)(2)(L). (This is a GIL.)

August 3, 2023

NAME
ADDRESS

Dear NAME:

This letter is in response to your letter dated June 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:

I have been in touch with the Taxpayer Assistance Division of the Illinois Department of Revenue seeking guidance on whether my COUNTRY State Pension is taxed by the State of Illinois. The advice I received from that office was to request a private letter ruling from your office and this is my formal request for such a letter.

I have reviewed the section of the Illinois Administrative Code pertaining to Private Letter Rulings and have attached to this letter any information at my disposal pertaining to my request. If anything further is needed I will, at your request, try to provide it.

Reason for Request

I am a citizen of the COUNTRY. I have been a permanent resident of the US since 1987. I have lived at my current address in Illinois for the entirety of my residence in the US. While living in the US, I continued to pay contributions to the COUNTRY State Pension Scheme and qualified for the full COUNTRY retirement pension. In parallel with this, I also contributed to Social Security here in the US and

also qualified for Social Security here, as is allowed by the Social Security Agreement between the COUNTRY and the USA.

I began receiving my COUNTRY pension on January 5, 2023. The Tax Treaty between the COUNTRY and the USA dictates that my COUNTRY pension is taxable at the Federal level in the same way that US Social Security is taxable at the Federal level. However, there is no such tax treaty between the COUNTRY and individual states in the US. My research here has produced only the generalized statement that Illinois is one of the states that does not tax retirement pensions, but I have not been able to find a definitive ruling that says Illinois either does or does not tax state retirement pensions, paid from the COUNTRY.

For clarification on this, I contacted your Taxpayer Assistance Division who, in turn, referred me to you. I am, therefore requesting a Private Letter Ruling on this matter for the current (2023) tax year and subsequent tax years pending any changes to Illinois law, or to the expiration of the validity of such a ruling.

This is the first time I have submitted this request and, to the best of my knowledge the Legal Department has not issued a prior ruling on this matter. Nor is this matter the subject of an audit or any pending litigation.

DEPARTMENT'S RESPONSE:

Section 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 404(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.

Section 203(a)(2)(L) provides the following deduction in the computation of an individual's Illinois base income:

For taxable years ending after December 31, 1983, an amount equal to all social security benefits and railroad retirement benefits included in such total pursuant to Sections 72(r) and 86 of the Internal Revenue Code;

The Department of the Treasury Technical Explanation of the Convention Between the United States of America and the United Kingdom for the Avoidance of Double Taxation ("Technical Explanation") signed in London on July 24, 2001, states, in part:

This article deals with the taxation of private (i.e., non-government service) pensions and annuities, social security benefits, alimony and child support payments.

Paragraph 1 provides as a general rule, in subparagraph (a), that the State of residence of the beneficial owner has the exclusive right to tax pensions and other similar remuneration. For this purpose, a payment is treated as a pension or other similar remuneration if it is a payment under a pension scheme, as defined in sub-paragraph (o) of paragraph 1 of Article 3 (General Definitions). While the term "pension" generally would include both periodic and lump-sum payments, paragraph 2 of the Article provides specific rules to deal with lump-sum payments, so they are not subject to the general rule of paragraph 1.

* * *

Paragraph 3 provides for exclusive residence-country taxation of social security benefits. Like the prior Convention, but unlike the U.S. Model, the Convention provides that payments made by one of the Contracting States under the provisions of its social security or similar legislation to a resident of the other Contracting State will be taxable only in the other Contracting State. This paragraph applies to social security beneficiaries, whether they have contributed to the system as private-sector or government employees. The phrase "similar legislation" is intended to refer to United States Tier 1 Railroad Retirement benefits.

Your letter indicates that you are a permanent resident of the United States and began receiving a UK pension on January 5, 2023. Depending on the type of pension

NAME
Page 4
August 3, 2023

you receive, which is not discernable from your letter, either the provisions of IITA Section 203(a)(2)(F) or Section 203(a)(2)(L) may apply.

I hope this information is helpful. You may also reference Publication 120, Retirement Income, available on the IDOR website at www.tax.illinois.gov. 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).

Very truly yours,

Brian Fliflet
Deputy General Counsel

BF:rkn