IT 09-0001-GIL 01/14/2009 APPORTIONMENT – PAYROLL FACTOR

> General Information Letter: Wages paid to an employee performing services within and without Illinois are allocable to Illinois if the employee's base of operations is in Illinois or, if the employee has no base of operations, if his services are directed or controlled from a place in Illinois.

January 14, 2009

Dear:

This is in response to your letter dated December 12, 2008 in which you request information regarding the taxation of certain compensation. The nature of your request and the information you have provided require that we respond with a General Information Letter (GIL). A GIL 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 accessed at www.revenue.state.il.us.

In your letter you have stated the following:

> I am trying to determine if an employee's wages are subject to Illinois Income Taxes. Following are the facts:
>
> 1. The employee is a resident of Washington.
> 2. The employee performs services in various states.
> 3. The employer's office is located in Illinois and the employee is instructed from this location of where the services are to be performed.
> 4. The employee performs no more than 5% of the services in Illinois (it will vary from year to year).
> 5. The services he performs in Illinois do not have any relationship to the services he performs in the other states.
>
> Does this maximum of 5% of services performed in Illinois qualify as significant and not incidental enough to classify his income as being earned in Illinois? If not, would the 5% be taxable in Illinois?

RULING

Section 302(a) of the Illinois Income Tax Act ("IITA"; 35 ILCS 5/302(a)) states:

> All items of compensation paid in this State (as determined under Section 304(a)(2)(B)) to an individual who is a nonresident at the time of such payment and all items of deduction directly allocable thereto, shall be allocated to this State.

IITA Section 304(a)(2)(B) states:

> 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;