

General Information Letter: Per diem travel allowances are included in base income to the extent included in federal adjusted gross income.

December 15, 2008

Dear:

This is in response to your letter dated October 22, 2008. 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 found on the Department's website at www.revenue.state.il.us

In your letter you have stated the following:

This letter concerns a payroll issue that has been brought to our attention. We have made other attempts to resolve this issue, to no avail. We hope your office will provide some resolution.

We have been advised that the "per diem" line item is intended to reimburse employees who incur expenses as a result of working away from home, and that this is distinct from mileage expense. We have been informed that at least one of our competitors has been including a "per diem" in their employees' pay, not as a supplement but as a replacement for part of their standard hourly rate. This company is AGENCY, Inc. (FEIN: XX-XXXXXXX).

This use of "per diem" allows the employer to reduce their Social Security and Medicare contributions, their Federal and Illinois unemployment insurance, and their worker's compensation insurance. It also reduces their employees' Social Security and Medicare contributions, income tax, and, if applicable, child support payments.

We have been informed that this employer paid over \$600,000 in "per diem" in 2007 alone, and has been utilizing this practice for over five years. This "per diem" is utilized across the board on a per hour basis. This employer is competing for work at county, state, and federally funded facilities, and has used this technique to offer rates we cannot match. We have been put at a serious competitive disadvantage. If this use of "per diem" is legal, we would like a clarification. If this use of "per diem" is illegal, we would appreciate an investigation into and resolution of this matter, as it affects not only our competitive situation but the use of our tax dollars.

RULING

Under the Illinois Income Tax Act ("IITA" ; 35 ILCS 5/101 *et seq.*) the starting point in the computation of Illinois net income in the case of an individual is the taxpayer's properly reportable federal adjusted gross income. Although certain statutory addition and subtraction modifications must be made to adjusted gross income in order to arrive at a taxpayer's Illinois base income, none of these modifications relates to the treatment of an employer's reimbursement of employee business expenses. Accordingly, the federal income tax treatment of amounts paid an employee as a "per diem" automatically applies for Illinois income tax purposes. Of course, an employer may not classify payments to an employee that are in fact taxable compensation income as a non-taxable working condition fringe benefit.

IT 08-0039-GIL
December 15, 2008
Page 2

Illinois does not impose Social security and Medicare taxes. For questions regarding Illinois unemployment insurance, contact the Illinois Department of Employment Security at 800-247-4984. For questions regarding workers' compensation insurance, contact the Illinois Workers' Compensation Commission at 866-352-3033.

As stated above, this is a GIL. A GIL 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 86 Ill. Adm. Code 1200.110(b). If you have further questions regarding this GIL, feel free to contact me at (217) 782-7055.

Sincerely,

Brian L. Stocker
Staff Attorney (Income Tax)