

Illinois revises definition of compensation paid in state, employer withholding requirements

Overview

On August 26, 2019 Illinois Governor J.B. Pritzker signed into law Public Act 101-0585, which changes the definition of compensation paid in Illinois, institutes new income tax withholding requirements for employers that have nonresident employees working more than 30 days in Illinois during a tax year, and updates the qualifications an Illinois taxpayer must meet in order to claim a credit for income taxes paid to other states.¹

This tax alert summarizes the changes enacted under Public Act 101-0585 and highlights taxpayer considerations.

Definition of compensation paid in state

Public Act 101-0585 amends the Illinois Income Tax Act, changing the definition of compensation paid in the state for individuals who perform services in Illinois and in other states.² For tax years ending on or after December 31, 2020, when an individual's work includes services performed within and outside of Illinois, compensation is paid in Illinois, if:

- Some of the individual's service is performed within Illinois;
- The individual's service performed within Illinois is nonincidental to the individual's service performed outside of Illinois; and
- The individual's service is performed within Illinois for more than 30 "working days."³

The law defines a "working day" as one in which an individual performs services on behalf of an employer and more time is spent performing that duty in Illinois than outside of Illinois.⁴ This definition also includes days when the only service an individual performs is traveling to a destination within Illinois and arrives that day.⁵ The definition of "working day" excludes days when employees perform disaster or emergency-related services requested by the government for disaster periods.⁶

The new law removes the "base of operations" test from determining whether compensation was paid in Illinois.⁷

Employer income tax withholding requirements

Beginning on January 1, 2020, employers must withhold Illinois income tax for nonresident employees who spend more than 30 working days in the state.⁸ To calculate withholding amounts, the law requires employers to multiply an employee's total compensation for the tax year by a ratio of the working days (inclusive of the initial 30-working days) the employee spends performing services in Illinois over the total working days the employee spends performing services both within and outside of Illinois during a tax year.⁹

¹ Public Act 101-0585. A copy of the adopted law is accessible [here](#).

² Public Act 101-0585, amending 35 Ill. Comp. Stat. 5/304(a)(2)(B)(iii).

³ *Id.*

⁴ Public Act 101-0585, adding 35 Ill. Comp. Stat. 5/304(a)(2)(B)(iii)(a)-(b).

⁵ Public Act 101-0585, adding 35 Ill. Comp. Stat. 5/304(a)(2)(B)(iii)(b)(2).

⁶ Public Act 101-0585, adding 35 Ill. Comp. Stat. 5/304(a)(2)(B)(iii)(c).

⁷ Public Act 101-0585, amending 35 Ill. Comp. Stat. 5/304(a)(2)(B)(iii).

⁸ Public Act 101-0585, adding 35 Ill. Comp. Stat. 5/701(a-5).

⁹ *Id.*, referring to 35 Ill. Comp. Stat. 5/304(a)(2)(B).

External Multistate Tax Alert

The law imposes requirements on employers to use either one of two methods to obtain data used to calculate withholding amounts.¹⁰ Employers that maintain a time and attendance system that tracks where an employee performs services on a daily basis must use data culled from such systems.¹¹ The employer's time and attendance system must require, on a contemporaneous basis, employees to record the work location for every day worked outside of Illinois.¹² The system also must be designed to allow an employer to allocate an employee's wages for income tax purposes among all states in which the employee performs services.¹³

For employers that do not maintain a time and attendance system that meets the requirements described above, they must obtain a written statement from an employee for the number of days reasonably expected to be spent performing services in Illinois during the taxable year.¹⁴ Absent an employer's knowledge of fraud or gross negligence by an employee in making the determination, or collusion between the employer and employee to evade tax, the law states that the written statement is prima facie evidence establishing a rebuttable presumption of the number of days an employee spent performing services in Illinois.¹⁵ The law requires employers to keep employees' written statements in their books and records.¹⁶

Credit for Taxes Paid to Other States

Under Public Act 101-0585, for tax years ending on or after December 31, 2020, Illinois taxpayers who claim a credit for income taxes paid to other states will follow the new definition of compensation paid in the state; however, the 30-working day threshold will not apply.¹⁷

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¹⁰ Public Act 101-0585, adding 35 Ill. Comp. Stat. 5/701(a)(2)(a-5).

¹¹ Public Act 101-0585, adding 35 Ill. Comp. Stat. 5/701(a)(2)(a-5)(1).

¹² Public Act 101-0585, adding 35 Ill. Comp. Stat. 5/701(a)(2)(a-5)(1)(A).

¹³ Public Act 101-0585, adding 35 Ill. Comp. Stat. 5/701(a)(2)(a-5)(1)(B).

¹⁴ Public Act 101-0585, adding 35 Ill. Comp. Stat. 5/701(a)(2)(a-5)(2).

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ Public Act 101-0585, amending 35 Ill. Comp. Stat. 5/601(b)(3).

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