

STATE OF COLORADO

DEPARTMENT OF REVENUE

State Capitol Annex
1375 Sherman Street, Room 409
Denver, Colorado 80261
Phone (303) 866-3091
FAX (303) 866-2400



Bill Ritter, Jr.
Governor

Roxanne Huber
Executive Director

GIL-2008-28

October 23, 2008

XXXXXXXXXXXXXXXXXX
Attn: XXXXXXXXX
XXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXX

Re: Income Tax / Board of Directors

Dear XXXXXXXXXXXX,

This letter is in response to your letter of August 21, 2008 to the Colorado Department of Revenue. I apologize that it has taken so long to reply to your request. The department recently acquired the staff needed to respond to these types of requests. The department also recently enacted a regulation governing requests for tax advice. We issue both private letter rulings and general information letters. See, §24-35-103.5, C.R.S. and Department regulation 24-35-103.5. Private letter rulings are issued in response to tax questions relating to specific factual settings and are binding on the department. General information letters are issued in response to general tax questions and are not binding on the department. You can view this regulation on-line at:

<http://www.revenue.state.co.us/taxstatutesregs/3921reg24-35-103.5.html>

I am initially treating your request as a request for a general information letter. As noted above, general information letters are general discussions of tax law and do not fully develop the tax treatment of any set of facts. If you would like a private letter ruling, please take a moment to review the regulation and resubmit your request with the necessary information.

Issue

1. Is income of nonresident directors of a nonresident corporation subject to Colorado income tax if the directors held a board of directors meeting in Colorado?

Background

You provide the following set of facts. Corporation A is neither domiciled nor incorporated in Colorado. The corporation's board of directors typically conducts four board-of-director meetings each year. In 2008, a two-day board of directors meeting was held in Colorado. Directors are paid a flat fee for attending each board meeting. Directors are also paid an annual retainer and are issued stock options on a quarterly basis, both of which are paid regardless of whether the directors attended the Colorado meeting. For tax year 2008, none of the directors have income sourced to Colorado, except for income at issue here.

Discussion

1. Income earned by a profession or occupation carried on in Colorado is subject to Colorado income tax.

Colorado imposes tax on income earned by a nonresident individual in a profession or occupation carried on in Colorado. §39-22-109(2)(b)(II), C.R.S.¹ For example, Colorado levies income tax on income earned by a nonresident professional athlete who participates in an athletic event in Colorado. See, Department Regulation 39-22-109(2)(1) and the professional athletes Q&A.² The directors clearly carried on their occupation in Colorado when they attended the Colorado board meeting.

In the case of a director, the amount of income normally apportioned to Colorado is the total amount paid (fee, annual retainer, and stock options) to the director for board-of-director services times a ratio of days worked in Colorado as a director divided by total days worked as a director. If the taxpayers believe a different approach is warranted under their circumstances, then the facts must be much more fully developed. Moreover, a general information letter would not be the appropriate forum and the matter should be submitted as a private letter ruling.

Pursuant to state law and department regulation 24-35-103.5, noted above, the Department will make public a redacted version of this letter. Your letter requesting this general information letter is not made public. I enclose a proposed redacted version of this letter. Please contact me within 60 days from the date of this letter if you have any questions, comments, or objection concerning the redacted letter. I hope this is helpful. Please feel free to contact me if you have any questions.

¹ For a nonresident individual, tax is apportioned in the ratio of Colorado nonresident federal adjusted gross income to the total federal adjusted gross income (as otherwise modified). Colorado nonresident adjusted gross income is that portion of the federal adjusted gross income derived from Colorado sources. Income is considered derived from Colorado sources if, among other things, it is earned from a profession or occupation carried on in Colorado.

² www.revenue.state.co.us/taxstatutesregs/incomeindex/profathletesQA.html.

Sincerely,

Neil L. Tillquist
Colorado Department of Revenue