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Governor

STATE OF LOUISIANA
DEPARTMENT OF REVENUE
POLICY SERVICES DIVISION

CYNTHIA BRIDGES
Secretary

Private Letter Ruling 01-004

Redacted Version

October 3, 2001

A Private Letter Ruling concerning the application of Louisiana personal income tax has been requested. Specifically, the Department of Revenue was asked whether severance pay is subject to Louisiana personal income tax and whether a Louisiana entity is responsible for withholding this tax. In addition, the Department of Revenue was asked whether a Louisiana entity in such a situation would be liable for any other taxes imposed by Louisiana upon the severance payments.

The following is a summary of the facts as supplied by the taxpayer requesting the Private Letter Ruling (Individual A):

- Individual A has not been a resident of Louisiana since early 2000.
- Individual A has established residency in another state.
- Individual A was a member of a professional athletic team and was required to perform services on behalf of a professional athletic team on a regular basis.
- Individual A receives severance payments, not compensation, under an employment agreement that was entered into several years ago with a Louisiana entity.
- Employment was defined as ending on January 31, 2003, unless employment was ended sooner.
- Employment was ended early in the calendar year 2000.
- Individual A is no longer employed and no longer renders services to the Louisiana employer.
- Overall payments received under the agreement are equal to the compensation that would have been received if the employment had not been terminated.

Several states have issued rulings concerning severance pay. According to the Idaho State Tax Commission in Docket No. 12274, severance pay received by an Idaho resident from a Washington state employer was subject to the Idaho personal income tax because Idaho residents are taxed on their income regardless of where it was derived.

The Idaho State Tax Commission went on to state that:

Severance pay is typically paid to individuals who are forced to leave employment through work force reductions and down sizing. Severance pay is not for past services, but is generally paid to help employees while between jobs. The Tax Commission does not see the severance pay as payment for work performed by the taxpayer. Rather the Tax Commission sees the severance pay as a benefit paid to the taxpayer because he was forced to find other employment.

In June 1992, the Federation of Tax Administrators formed the Task Force on Nonresident Income Tax Issues. One of the issues with which the Task Force concerned itself was the taxation of nonresident professional athletes. The goal of the Task Force concerning this issue was to develop a uniform approach to the proper apportionment of the income of professional athletes between the states for tax purposes. In March 1994, the Task Force published a report entitled State Income Taxation of Nonresident Professional Team Athletes: A Uniform Approach. As part of this report, the Federation of Tax Administrators proposed uniform state regulations to apportion income of nonresident professional athletes.

According to the proposed uniform state regulations, a member of a professional athletic team is defined to include, those employees who are active players, players on the disabled list and any other persons required to travel and who do travel with and perform services on behalf of a professional athletic team on a regular basis. This includes but is not limited to coaches, managers, and trainers (Compensation Received by Nonresident Professional Athletes (b)(2)).

According to the proposed uniform state regulations, not all of the

compensation received by members of professional athletic teams is subject to apportionment. Those forms of compensation which are not subject to apportionment include strike benefits, severance pay, termination pay, contract or option year buy-out payments, expansion or relocation payments, or any other payments not related to services rendered to the team (Compensation Received by Nonresident Professional Athletes (b)(4)(i)).

As such, any severance payments received while a resident of Louisiana would be sourced to Louisiana, but any severance payments received after a taxpayer changed his/her state of residence would be sourced to his/her current state of residence.

Cynthia Bridges
Secretary

By: _____
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A Private Letter Ruling (PLR) is issued under the authority of LAC 61:III.101(C). A PLR provides guidance to a specific taxpayer at the taxpayer's request. It is a written statement issued to apply principles of law to a specific set of facts or a particular tax situation and is limited to the matters specifically addressed. A PLR does not have the force and effect of law and may not be used or cited as precedent. A PLR is binding on the Department only as to the taxpayer making the request and only if the facts provided with the request were truthful and complete and the transaction was carried out as proposed. The Department's position concerning the particular tax situation addressed remains in effect for the requesting taxpayer until a subsequent declaratory ruling, rule, court case,