



## 100TH GENERAL ASSEMBLY

### State of Illinois

2017 and 2018

HB3812

by Rep. Natalie A. Manley

#### SYNOPSIS AS INTRODUCED:

35 ILCS 5/302  
35 ILCS 5/701

from Ch. 120, par. 3-302  
from Ch. 120, par. 7-701

Amends the Illinois Income Tax Act. Provides that the amount of compensation allocated to this State for nonresident individuals (other than professional athletes) shall be the portion of the individual's total compensation for services performed for his or her employer during the taxable year which the number of working days spent within this State performing services for the employer in any manner during the taxable year bears to the total number of working days spent both within and without this State during the taxable year (currently, all items of compensation paid in the State are allocated to the State). Effective immediately.

LRB100 08037 HLH 18122 b

FISCAL NOTE ACT  
MAY APPLY

A BILL FOR

1 AN ACT concerning revenue.

2 **Be it enacted by the People of the State of Illinois,**  
3 **represented in the General Assembly:**

4 Section 5. The Illinois Income Tax Act is amended by  
5 changing Sections 302 and 701 as follows:

6 (35 ILCS 5/302) (from Ch. 120, par. 3-302)

7 Sec. 302. Compensation paid to nonresidents.

8 (a) In general. For taxable years beginning prior to  
9 January 1, 2017, all ~~All~~ items of compensation paid in this  
10 State (as determined under Section 304(a)(2)(B)) to an  
11 individual who is a nonresident at the time of such payment and  
12 all items of deduction directly allocable thereto, shall be  
13 allocated to this State.

14 For taxable years beginning on or after January 1, 2017:

15 (1) all items of compensation of a nonresident  
16 individual who is a member of a professional athletic team,  
17 and all items of deduction directly allocable thereto,  
18 shall be allocated to this State as determined under  
19 Section 304(a)(2)(B)(iv); and

20 (2) the amount of all items of compensation of all  
21 other nonresident individuals, and of all items of  
22 deduction directly allocable thereto, allocated to this  
23 State shall be the portion of the individual's total

1 compensation for services performed for his or her employer  
2 during the taxable year which the number of working days  
3 spent within this State performing services for the  
4 employer in any manner during the taxable year bears to the  
5 total number of working days spent both within and without  
6 this State during the taxable year. For purposes of this  
7 paragraph:

8 (A) A "working day" is any day on which the  
9 employee performs duties on behalf of the employer.  
10 Weekends, vacation days, sick days, and holidays  
11 (whether or not paid) are not working days unless the  
12 employee is required by the employer to perform some  
13 duties on that day.

14 (B) A working day is spent in this State if:

15 (i) a greater amount of time is spent by the  
16 employee in this State during that day performing  
17 duties on behalf of the employer (other than  
18 travelling) than is spent performing duties in any  
19 other State; or

20 (ii) the only work performed by the employee on  
21 behalf of the employer on that day is travelling to  
22 a destination within this State, and the employee  
23 arrives on that day.

24 (C) A working day is not spent in this State if the  
25 only activity engaged in by the employee on behalf of  
26 the employer in this State on that day is travelling

1           from or through this State to a destination outside  
2           this State.

3           (b) Reciprocal exemption. The Director may enter into an  
4 agreement with the taxing authorities of any state which  
5 imposes a tax on or measured by income to provide that  
6 compensation paid in such state to residents of this State  
7 shall be exempt from such tax; in such case, any compensation  
8 paid in this State to residents of such state shall not be  
9 allocated to this State. All reciprocal agreements shall be  
10 subject to the requirements of Section 2505-575 of the  
11 Department of Revenue Law (20 ILCS 2505/2505-575).

12           (c) Cross references.

13           (1) For allocation of amounts received by nonresidents  
14 from certain employee trusts, see Section 301(b)(2).

15           (2) For allocation of compensation by residents, see  
16 Section 301(a).

17 (Source: P.A. 90-491, eff. 1-1-98; 91-239, eff. 1-1-00.)

18           (35 ILCS 5/701) (from Ch. 120, par. 7-701)

19           Sec. 701. Requirement and Amount of Withholding.

20           (a) In General. Every employer maintaining an office or  
21 transacting business within this State and required under the  
22 provisions of the Internal Revenue Code to withhold a tax on:

23           (1) compensation allocated to this State under  
24 subsection (a) of Section 302 ~~paid in this State (as~~  
25 ~~determined under Section 304(a)(2)(B) to an individual; or~~

1           (2) payments described in subsection (b) shall deduct  
2           and withhold from such compensation for each payroll period  
3           (as defined in Section 3401 of the Internal Revenue Code)  
4           an amount equal to the amount by which such individual's  
5           compensation exceeds the proportionate part of this  
6           withholding exemption (computed as provided in Section  
7           702) attributable to the payroll period for which such  
8           compensation is payable multiplied by a percentage equal to  
9           the percentage tax rate for individuals provided in  
10          subsection (b) of Section 201.

11          (b) Payment to Residents. Any payment (including  
12          compensation, but not including a payment from which  
13          withholding is required under Section 710 of this Act) to a  
14          resident by a payor maintaining an office or transacting  
15          business within this State (including any agency, officer, or  
16          employee of this State or of any political subdivision of this  
17          State) and on which withholding of tax is required under the  
18          provisions of the Internal Revenue Code shall be deemed to be  
19          compensation paid in this State by an employer to an employee  
20          for the purposes of Article 7 and Section 601(b)(1) to the  
21          extent such payment is included in the recipient's base income  
22          and not subjected to withholding by another state.  
23          Notwithstanding any other provision to the contrary, no amount  
24          shall be withheld from unemployment insurance benefit payments  
25          made to an individual pursuant to the Unemployment Insurance  
26          Act unless the individual has voluntarily elected the

1 withholding pursuant to rules promulgated by the Director of  
2 Employment Security.

3 (c) Special Definitions. Withholding shall be considered  
4 required under the provisions of the Internal Revenue Code to  
5 the extent the Internal Revenue Code either requires  
6 withholding or allows for voluntary withholding the payor and  
7 recipient have entered into such a voluntary withholding  
8 agreement. For the purposes of Article 7 and Section 1002(c)  
9 the term "employer" includes any payor who is required to  
10 withhold tax pursuant to this Section.

11 (d) Reciprocal Exemption. The Director may enter into an  
12 agreement with the taxing authorities of any state which  
13 imposes a tax on or measured by income to provide that  
14 compensation paid in such state to residents of this State  
15 shall be exempt from withholding of such tax; in such case, any  
16 compensation paid in this State to residents of such state  
17 shall be exempt from withholding. All reciprocal agreements  
18 shall be subject to the requirements of Section 2505-575 of the  
19 Department of Revenue Law (20 ILCS 2505/2505-575).

20 (e) Notwithstanding subsection (a)(2) of this Section, no  
21 withholding is required on payments for which withholding is  
22 required under Section 3405 or 3406 of the Internal Revenue  
23 Code.

24 (Source: P.A. 97-507, eff. 8-23-11; 98-496, eff. 1-1-14.)

25 Section 99. Effective date. This Act takes effect upon  
26 becoming law.