HB5517

LRB10016338HLH31464b

100TH GENERAL ASSEMBLY

State of Illinois

2017 and 2018

HB5517

by Rep. Natalie A. Manley

SYNOPSIS AS INTRODUCED:

35 ILCS 5/302	from Ch. 120, par. 3-302
35 ILCS 5/701	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.

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FISCAL NOTE ACT
MAY APPLY

A BILL FOR

AN ACT concerning revenue.

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

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

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

Sec. 302. Compensation paid to nonresidents.

(a) In general. For taxable years beginning prior to January 1, 2018, all ~~All~~ items of compensation paid in this State (as determined under Section 304(a)(2)(B)) to an individual who is a nonresident at the time of such payment and all items of deduction directly allocable thereto, shall be allocated to this State.

For taxable years beginning on or after January 1, 2018:

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

(2) the amount of all items of compensation of all other nonresident individuals, and of all items of deduction directly allocable thereto, allocated to this State 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. For purposes of this paragraph:

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

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

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

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

(C) A working day is not spent in this State if the only activity engaged in by the employee on behalf of the employer in this State on that day is travelling from or through this State to a destination outside this State.

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

(c) Cross references.

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

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

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

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

Sec. 701. Requirement and Amount of Withholding.

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

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

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

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

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

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

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

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

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