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Revised DD 12-1: G.L. c. 62, s. 6(a) Credit for Taxes Paid to Another Jurisdiction: Insurance Fund Payments Made Pursuant to Rhode Island Law

The Department received numerous questions since Directive 12-1 was issued. Therefore, we have added two substantive paragraphs at the end of the Directive which address the questions we have been receiving regarding its retroactive status.

DD 12-1 revokes LR 77-10

Issue:

Whether mandatory payments made by a Massachusetts taxpayer to Rhode Island under the Rhode Island Temporary Disability Insurance Act (the "Act") should be afforded the credit against Massachusetts personal income tax as taxes paid to another jurisdiction under G.L. c. 62, § 6(a)?

Directive:

Yes. The credit allowed under G.L. c. 62, § 6(a) applies to any income tax imposed by and paid to another jurisdiction. The Act requires that all employees doing business in Rhode Island pay certain amounts, measured by their wages, to the Fund. Therefore, provided the taxpayer is a Massachusetts resident, such payments are eligible for the credit.

Background:

The purpose of this Directive is to revoke Letter Ruling 77-10, in which the Commissioner ruled that payments made under the Rhode Island Temporary Disability Insurance Act^[1] were not the type of income taxes referred to in G.L. c. 62, § 6(a). The Commissioner concluded that payments made under the Act constitute insurance protection for the individual and are not used to defray the cost of government in Rhode Island.

The Act requires all employees doing business in Rhode Island to make a mandatory contribution to the Fund. The Act calculates this contribution according to the employee's income, for 2011, in the amount of 1.3% of the wages paid by the employer, with a wage base of \$58,400. See R.I. Gen. Laws § 28-40-1. The payments are placed in the Fund and used by the state to provide relief for residents who are unemployed due to a disability. Thus, the tax imposed by the Act is calculated according to the taxpayer's income and is used to achieve a public purpose. Moreover, payments made under the Rhode Island Act have been held to constitute "State 'income' taxes" under federal law and, as such, are allowed as a deduction for federal income tax purposes under Code § 164. *McGowan v. Commissioner of Internal Revenue*, 67 T.C. 599, 610 (1976); Revenue Ruling 81-191.

Discussion:

Pursuant to Massachusetts G.L. c. 62, § 6(a), a credit is allowed against taxes imposed by this chapter to a resident for taxes due any other state, on account of any item of Massachusetts gross income. See G.L. c. 62, § 6(a). An "item of Massachusetts gross income" is an item of income that is taxable under the Massachusetts personal income tax after applicable adjustments and deductions. See G.L. c. 62, §§ 2 and 3.

The Department has defined an income tax as "a contribution, measured by a taxpayer's ability to pay on the basis of income, exacted from those domiciled or doing business within a state, to defray the expenses of government." See LR 94-8. In analyzing a particular tax, the controlling question is whether the tax "is in the nature of an income tax," regardless of its label. See DOR Directive 08-6.

Accordingly, the Department rules that mandatory contributions imposed by the Act qualify as income taxes paid to the state of Rhode Island for purposes of the credit allowed under G.L. c. 62, § 6(a). The tax imposed by the Act is calculated based on the employee's wages and these payments are placed in the Fund and used by the state to provide relief for the disabled and unemployed. This is in the nature of an income tax, and such payments are used to defray the cost of government in Rhode Island because they assist the state in providing income to disabled and unemployed residents who qualify for temporary or short-term disability compensation. Therefore, such payments are eligible for the credit afforded under G.L. c. 62, § 6(a).

This Directive applies to all open tax periods pursuant to G.L. c. 62C, § 37. The computation of the credit is based on comparing the Massachusetts income tax on income

reported to Rhode Island to the actual tax plus RISDI paid to Rhode Island; the credit is limited to the smaller of these two amounts. To recalculate the credit, the RISDI should be included as part of the total tax paid to Rhode Island (see worksheet for income tax paid to another jurisdiction, Line 8).

Taxpayers and practitioners are encouraged to file for abatement of tax on-line at "Webfile for Income" found on the Department's website at www.mass.gov/dor. This is a secure site and its use will speed the processing of abatement applications. Taxpayers may also file a paper Application for Abatement/Amended Return, Form CA-6 which can be found under the "Forms" section of the Department's website. Taxpayers should be prepared to submit the following documentation: a copy of the Rhode Island W-2, indicating the amount of RISDI located in Box 14; and a copy of the tax return(s) filed with Rhode Island. If additional documentation is necessary, taxpayers will be notified by the Department.

/s/Amy Pitter
Amy Pitter
Commissioner of Revenue

AP:MTF:wm

March 15, 2012

DD 12-1 (Revised)

[1] Some states that have similar Temporary Disability Insurance Funds include New York, New Jersey, Illinois, California, Hawaii and Puerto Rico.