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You ask whether commercial annuities are subject to Massachusetts income tax withholding.

Massachusetts General Laws state that "every employer making payments to employees... of wages subject to tax...shall deduct and withhold a tax upon such wages...". (G.L. c.62B, § 2).

In general, Massachusetts withholding provisions follow the federal withholding provisions. For withholding purposes Massachusetts specifically adopts the federal definition of wages. Massachusetts General Laws Chapter 62B, Section 1, recently amended by Chapter 233 of the Acts of 1983, defines "wages" for Massachusetts withholding purposes as

wages as defined in section thirty-four hundred and one (a) of the Internal Revenue Code and periodic payments and non-periodic distributions as defined in section thirty-four hundred and five of said Code and subject to federal withholding.

Section 3405(a)(1) of the Internal Revenue Code provides that "[t]he payor of any periodic payment (as defined in subsection (d)(2)) shall withhold from such payment the amount which would be required to be withheld from such payment if such payment were a payment of wages by an employer to an employee for the appropriate payroll period". Section 3405(a)(2) states that "[a]n individual may elect to have paragraph (1) [withholding] not apply with respect to periodic payments made to such an individual."

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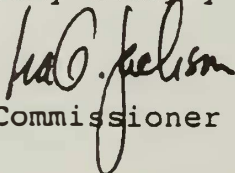
"The payor of any nonperiodic distribution (as defined in subsection (d)(3)) shall withhold from such distribution...[the designated amount]". (I.R.C. § 3405(b)(1)). Section 3405(b)(3) provides that "[a]n individual may elect not to have paragraph (1) [withholding] apply with respect to any nonperiodic distribution."

Section 3405(d)(2) defines periodic payment as a designated distribution which is an annuity or similar periodic payment. Subsection (d)(3) defines a nonperiodic distribution as any designated distribution which is not a periodic payment.

"A designated distribution is any distribution or payment from or under an employer deferred compensation plan, an individual retirement plan..., or a commercial annuity." "A commercial annuity is an annuity, endowment, or life insurance contract issued by an insurance company licensed to do business under the laws of any States." (U.S.Treas. Reg. § 35.3405-1(A)(A-2)(A-4)).

The definition of wages for Massachusetts withholding purposes includes commercial annuities. Therefore, payments or distributions from commercial annuities subject to federal withholding are subject to Massachusetts withholding. If the recipient has elected against withholding under Code Section 3405(a)(2) or 3405(b)(3) and the payment is not subject to federal withholding, it is not subject to Massachusetts withholding.

Very truly yours,


Commissioner of Revenue

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