**Section 100.7030 Payments to Residents (IITA Section 701)**

a) In General

1) Any payment to an Illinois resident as an employee or otherwise by any payer maintaining an office or transacting business in this State shall be subject to withholding of Illinois income tax if those payments are subject to withholding of federal income tax. Any payer maintaining an office or transacting business in this State making these payments shall be considered an "employer" for purposes of IITA Article 7 and these regulations and, accordingly, will be subject to the same rules and procedures governing employers withholding tax on compensation paid in Illinois. For example, these payers will be required to register as withholding agents, and shall be subject to the reporting (and payment) requirements of IITA Sections 703 and 704. Also, these payers will be subject to the penalties prescribed in Article 10 of the Act.

2) Payments to an Illinois resident by a payer transacting business or maintaining an office in Illinois on which federal withholding is required shall be considered "compensation paid in Illinois" for purposes of IITA Article 7 and this Part. Illinois residents receiving these payments shall be considered "employees" for purposes of IITA Article 7 and this Part. Thus, for example, the computation of the amount of tax to be deducted and withheld shall be made pursuant to Section 100.7050 and the payee shall be entitled to a withholding exemption pursuant to Section 100.7100.

3) Withholding shall be required on the first payment on which withholding of federal income tax is required and shall continue to be required in respect of all these payments until withholding of federal income tax on the payments terminates pursuant to the Internal Revenue Code and the regulations thereunder.

b) Payments Subject to Federal Withholding

Withholding of Illinois income tax is required on all payments to Illinois residents on which withholding of tax is required under the Internal Revenue Code. This applies not only to compensation but to any other type of payment on which federal withholding of income tax is required. Withholding shall be considered required under the Internal Revenue Code if the payee is authorized either by the Internal Revenue Code or the regulations thereunder to request withholding of federal income tax on a particular type of payment and the payee and payer have entered into an agreement for withholding. No authorization from the payee for Illinois withholding is necessary in this situation; the requirement of federal withholding even though voluntarily elected shall automatically impose Illinois withholding.

c) Exceptions

1) Withholding will not be required under this Section on any payment to the extent the payment is not includable in the recipient's base income. Thus, if a payment consists partially of a return of capital, only that part of the payment that is not a return of capital and, hence, is income would be subject to withholding. Also annuity payments from qualified employee benefit plans, which are not includable in Illinois base income under IITA Section 203(a)(2)(E), would not be subject to withholding under this Section notwithstanding an agreement between the payor and the payee for the withholding of federal income tax on those payments. Similarly, if a payment consists of an amount that is exempt from taxation by this State either by reason of its Constitution or by reason of the Constitution, treaties or statutes of the United States (i.e., interest on obligations of the United States), the payment would not be subject to withholding under this Section.

2) Withholding will not be required on any payment under this Section, except "compensation paid in Illinois", as defined in Section 100.7010(a), to the extent that the payment is subjected to withholding by another state. A signed declaration by the payee to the effect that another state is withholding income tax on a payment shall relieve the payer of the requirement to withhold Illinois tax on the payment.

(Source: Amended at 45 Ill. Reg. 2006, effective January 29, 2021)