



COLORADO
Department of Revenue

Taxation Division

Office of Tax Policy Analysis
P.O. Box 17087
Denver, CO 80217-0087
dor_taxpolicy@state.co.us

GIL 20-004

December 18, 2020

XXXXXXXXXX

Via Electronic Mail: XXXXXXXXXXXX

Re: Apportionment of Income Arising from Restricted Stock Units

Dear XXXXXXXXXXXX:

You submitted a request for a general information letter on the proper sourcing of income arising from restricted stock units. The Colorado Department of Revenue ("Department") issues general information letters and private letter rulings. A general information letter provides a general overview of the relevant tax issues, but is not binding on the Department. A private letter ruling provides a specific determination for a specific set of facts, is binding on the Department, and requires payment of a fee. For more information about general information letters and private letter rulings, please see 1 CCR 201-1, Rule 24-35-103.5.

Issue

To what extent is a nonresident's income from restricted stock units considered to be derived from sources within Colorado pursuant to section 39-22-109(2)(a), C.R.S.?

Discussion

A restricted stock unit is a form of deferred equity compensation. A restricted stock unit is a contractual right. As such, the terms of each award may vary, but they generally share common features. Company stock is not issued upon the grant of a restricted stock unit. Rather, certain conditions must be met before the restricted stock unit vests in the recipient. Upon vesting, the issuing company usually delivers a share of stock (or, in some cases, the cash equivalent) to the recipient. You inquired specifically about restricted stock units granted to employees with time conditions that vest in annual increments provided that the employee remains employed on the anniversary of the grant date.

For federal income tax purposes, income arising from the receipt of a restricted stock unit is not includable in federal gross income until it is vested and settled.¹ Because Colorado imposes an income tax on an individual's federal taxable income (subject to certain modifications), income arising from the receipt of a restricted stock unit will be similarly deferred.²

The Colorado income tax liability of a nonresident individual is calculated by first calculating the Colorado income tax that would be due if the taxpayer were a full-year Colorado resident.³ This tentative tax

¹ See I.R.C. §§ 83(a), 409A, and 451. Discussions of federal tax laws, regulations, and procedures in this letter are provided for the sole purpose of clarifying related Colorado laws, rules, and procedures and should not be relied upon. Taxpayers should consult their tax advisors for guidance on federal tax laws.

² § 39-22-104(1.7), C.R.S. See also subsection (2), which requires modification as provided in subsections (3) and (4).

³ 1 CCR 201-1, Rule 39-22-109(1).

amount is then multiplied by the ratio of the nonresident individual's Colorado modified adjusted gross income to the nonresident individual's total modified adjusted gross income.⁴

Section 39-22-109(2), C.R.S., prescribes whether income is derived from sources in Colorado for the purpose of determining Colorado modified adjusted gross income. Specifically, subsection (2)(a)(II) provides income from a business, trade, profession, or occupation carried on in Colorado is derived from sources in Colorado. Likewise, paragraph (3)(b) of 1 CCR 201-1, Rule 39-22-109 provides examples of common types of business, trade, profession, or occupation income derived from sources in Colorado.

Paragraph (3)(b)(ix) of the rule discusses stock options as follows:

Income from the exercise of employee stock options is Colorado-source income if such income is treated as compensation for federal tax purposes and to the extent the employee worked in Colorado during the period the employee was required to work for the employer prior to the exercise of the option.⁵

Although restricted stock units differ from stock options, they are sufficiently similar forms of deferred equity compensation to be sourced to Colorado according to the same apportionment principle. That is, the income earned on the vesting date will be sourced to Colorado based upon the number of work days in Colorado during the period the employee was required to work for the employer prior to the vesting date. For a discussion on the method of computing the work days in Colorado, see 1 CCR 201-1, Rule 39-22-109(3)(b)(i)(B).

By way of example, suppose on January 1 of year 1, an employer granted an employee a number of restricted stock units, some of which will vest on December 31 of year 1, and some of which will vest on December 31 of year 2, provided that the employee continues to be employed by the employer as of these dates. If the employee leaves at any time before the vesting dates, the unvested shares are forfeited. The employee is a resident of Colorado and works in Colorado for the entirety of year 1. Therefore, on December 31 of year 1, the employer delivers shares for the units that vest on that date. The employee includes the value of the shares in federal taxable income for year 1. On January 1 of year 2, employee relocates to another state and works in that state for the employer for the entirety of year 2. On December 31 of year 2, the employer delivers shares for the units that vest on that date. The value of the shares is included in the employee's federal taxable income for year 2. For ease, assume there are 262 work days in each of year 1 and year 2. This example is similar to the example posed by your letter.

For year 1, the income attributable to the shares delivered to the employee during the year is included in federal taxable income. As a resident individual for all of year 1, the entirety of the employee's income is subject to Colorado income tax regardless of whether the income was derived from sources inside or outside of Colorado.⁶ The employee will be subject to tax on the entire amount included in federal taxable for year 1.

For year 2, the income attributable to the shares delivered to the employee during the year is included in federal taxable income. In order for the restricted stock unit delivered in year 2 to vest, the employee must remain employed with the employer from the grant date (January 1 of year 1) through December 31 of year 2. During the two-year period the employee was required to work for the employer prior to the vesting of restricted stock units on December 31 of year 2, the employee worked half of such time (262 work days in year 1 out of 524 total work days) in Colorado. As such, half of the income attributable to the shares delivered in year 2 is sourced to Colorado.

⁴ § 39-22-109(1), C.R.S.; 1 CCR 201-1, Rule 39-22-109(1).

⁵ 1 CCR 201-1, Rule 39-22-109(3)(b)(ix).

⁶ § 39-22-104(1.7), C.R.S. See also § 39-22-109, C.R.S. (requiring the apportionment of Colorado tax only for nonresident individuals).

Miscellaneous

This letter represents the good faith opinion of Department personnel who are knowledgeable on state taxes issues. However, the Department does not make a specific determination on any of the issues raised and the Department is not bound by this general information letter.

Please provide feedback to help us measure and improve the success of this program. A short survey can be found at <https://www.colorado.gov/pacific/tax/how-was-your-service>. Follow the link for the Tax Policy Analysis office and choose the "I requested Guidance or a Letter Ruling (PLR or GIL)" option.

Sincerely,

Office of Tax Policy Analysis
Colorado Department of Revenue