



COLORADO
Department of Revenue

Taxation Division

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GIL-20-001

February 28, 2020

XXXXXXXXXX
Attn: XXXXXXXX
XXXXXXXXXX
XXXXXXXXXX

Re: Sourcing of partnership guaranteed payments

Dear XXXXXXXXXXXX,

You submitted a request for guidance regarding the sourcing of guaranteed payments paid to a nonresident partner for the purpose of Colorado income tax.

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 but not on the taxpayer, 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.

The Department treats your inquiry as a request for a general information letter. It is important to remember that general information letters, such as this one, are general discussions of tax law and are not binding on the Department. If you would like the Department to issue a private letter ruling on the issue raised here, you may submit a request and pay the fee in compliance with 1 CCR 201-1, Rule 24-35-103.5.

Issue(s)

1. Is the source of guaranteed payments made by a partnership to nonresident partners for services performed determined pursuant to Rule 39-22-109(3)(b)(xii) for Colorado income tax purposes?
2. Does a partnership’s election to apportion and allocate nonresident partners’ distributive shares pursuant to sections 39-22-303.6 and -303.7, C.R.S., impact the method for determining the source of guaranteed payments?

Discussion

Rule 39-22-109(3)(b)(xii) states that the source of a guaranteed payment¹ for services is determined in accordance with the rules for sourcing wage income. Wage income is Colorado-

¹ Guaranteed payments are described in section 707(c) of the Internal Revenue Code.

source income if it is paid for work performed in Colorado.² These rules are promulgated to clarify the application of section 39-22-109(2)(a)(II), C.R.S., pursuant to which any income attributable to a business, trade, or occupation carried on in Colorado is considered to be derived from sources within Colorado.

The separate provision in sections 39-22-109(2)(a)(III) and -203, C.R.S., prescribing the sourcing of distributive shares of partnership income do not apply to guaranteed payments for services rendered because guaranteed payments are not considered part of the partner's distributive share. The term "distributive share" is not expressly defined in Colorado income tax sections in which it appears and therefore has the same meaning as when used in a comparable context in the Internal Revenue Code.³ Section 707(c) of the Internal Revenue Code states that, for the purpose of section 61, defining gross income, guaranteed payments for services rendered are not considered to be part of a partner's distributive share.⁴

A partnership election made pursuant to section 39-22-203(1)(a), C.R.S., in determining the source of a nonresident partner's distributive share does not impact the method for determining the source of a guaranteed payment for services. Section 39-22-203(1)(a), C.R.S., applies only to a nonresident partner's distributive share.⁵ For the reasons provided above, a guaranteed payment is not considered part of a partner's distributive share for Colorado income tax purposes.

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.

The Department administers state and state-administered local sales and use taxes. This letter does not address sales and use taxes administered by self-collected home-rule cities and home-rule counties. You may wish to consult with those local governments that administer their own sales or use taxes about the applicability of those taxes. Visit our website at www.colorado.gov/tax for more information about state and local sales taxes.

Sincerely,

Office of Tax Policy Analysis
Colorado Department of Revenue

² Rule 39-22-109(2)(b)(i).

³ Section 39-22-103(11), C.R.S.

⁴ See S. Rep. No. 1622, 83d Cong., 2d Sess. 387 (1954): "Subsection (c) provides a rule with respect to guaranteed payments to members of a partnership. A partner who renders services to a partnership for a fixed salary, payable without regard to partnership income, shall be treated, to the extent of such amount, as one who is not a partner....The amount of such payment shall be included in the partner's gross income, and shall not be considered a distributive share of partnership income or gain." See also H.R. Rep. No. 1337, 83d Cong., 2d Sess. 227 (1954).

⁵ See, section 39-22-203(1)(a), C.R.S. ("In determining Colorado nonresident federal taxable income of a nonresident partner ... only the portion of such partner's distributive share ... in accordance with [either section 39-22-109, C.R.S., or, at the partnership's election, Colorado corporate apportionment rules].") (emphasis added).