



COLORADO

Department of Revenue

Taxation Division

Office of Tax Policy
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DOR_TaxPolicy@state.co.us

GIL-14-019

July 28, 2014

XXXXXXXXXXXX
Attn: XXXXXXXX
XXXXXXXXXXXX
XXXXXXXXXXXX

Re: Income Earned by Nonresident

Dear XXXXXXXXXXXX,

You submitted on behalf of your client ("Taxpayer") a request for guidance regarding the taxability of interest earned by a nonresident individual on tax lien certificates.

The Department issues general information letters and private letter rulings. A general information letter provides a general overview of the relevant tax issues and 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 Department Rule 24-35-103.5 at www.colorado.gov/revenue/tax > Tax Library > Rulings.

The Department initially treats your request as one of a general information letter. If you would like the Department to issue a private letter ruling on the issues you raise, you can resubmit a request and fee in compliance with Department Rule 24-35-103.5. It is important to remember that general information letters, such as this one, are general discussions of tax law and are not a determination of the tax consequence of any particular action or inaction.

Issues

Is the interest earned by a nonresident individual on tax lien certificates income that must be sourced to Colorado?

Background

When a real property owner becomes delinquent on real property taxes, a tax lien is created and the county can foreclose on the real property to recover the tax. As part of the foreclosure process, successful bidders are issued a tax certificate. The real property owner has three years in which to redeem the property by paying the successful bidder the amount of the bid and interest accrued from the time the certificate was purchased to

when the property owner redeems the certificate. If the property is not redeemed, the bidder is issued a tax deed for the property.

Taxpayer is a nonresident individual who purchases tax lien certificates. Interest is paid to the Taxpayer by the owner. Taxpayer requests guidance whether, as a nonresident, such income is subject to Colorado income tax.

Discussion

A nonresident individual is subject to Colorado income tax if such individual derives income from sources within Colorado. Income is derived from sources within Colorado if the income is attributable to:

- (I) The ownership of any interest in real or tangible personal property in Colorado;
- (II) A business, trade, profession, or occupation carried on in Colorado;
- (III) The distributive share of partnership or limited liability company income, gain, loss, and deduction.
- (IV) The share of estate or trust income, gain, loss, and deduction.
- (V) Income from intangible personal property, including annuities, dividends, interest, and gains from the disposition of intangible personal property to the extent that such income is from property employed in a business, trade, profession, or occupation carried on in Colorado;
- (VI) The share of subchapter S corporation income, gain, loss, credit, and deduction allocable or apportionable to Colorado.¹

There are three provisions that likely apply to the interest income. Meeting any one of the three provisions is sufficient to require Taxpayer to file a Colorado income tax return and pay Colorado income tax. First, the interest income is income from an ownership of an "interest" in real property (subparagraph I). Specifically, the tax lien certificate represents an "interest" in real property and the interest is directly attributable to that interest. This provision does not require that the "interest" be full ownership of the real property; it only requires that the taxpayer have an ownership in an interest. For example, a leasehold interest in real property is ownership of an interest in real property. Although Taxpayer may have only a contingent interest in the property because the homeowner maintains the right to redeem the certificate, taxpayer nevertheless has an interest in the real property.

Second, Taxpayer has a statutory right to receive interest until the property is redeemed. This statutory right is an intangible property right. For income derived from an intangible to be taxable in Colorado (subparagraph V), Taxpayer must use the intangible in a business, trade, profession, or occupation carried on in Colorado. The purchase of a tax lien is a commercial transaction if Taxpayer is purchasing the property as an investment (rather than a personal residence), even if Taxpayer only engages in a single transaction. For example, if an out-of-state company sells in Colorado a large piece of machinery and that was the company's only transaction in Colorado, the Department would still treat that

¹ §39-22-109(2)(a), C.R.S.

company as carrying on a business, trade, profession, or occupation in Colorado. In the case at hand, the tax certificate is being used in Colorado in a commercial transaction that is entered into in Colorado, and the tax certificate represents an interest in Colorado real property and is governed by the laws of Colorado.

Lastly, Taxpayer is carrying on a business, trade, profession, or occupation in Colorado for the reasons set forth above (subparagraph II).

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 here on any of the issues raised and the Department is not bound by this general information letter.

Enclosed is a redacted version of this letter. Pursuant to statute and regulation, this redacted letter will be made public within 60 days of the date of this letter. Please let me know in writing within that 60 day period whether you have any suggestions or concerns about this redacted letter.

Sincerely,

Office of Tax Policy
Colorado Department of Revenue