

Georgia Letter Ruling: LR IT-2015-01
Topic: Credit for Taxes Paid to Other States
Date Issued: January 30, 2015

This letter is in response to your letter requesting a ruling regarding the credit for taxes paid to other states.

Facts as Presented by the Taxpayer

“Taxpayer has been a resident and domiciliary of <other state> since <date>. He works from an office located in <other state>. Taxpayer earns income from his business operations in <other state> (such income referred to as “Business Income”) as well as income (including, but not limited to, interest, dividends, and capital gains, etc.) on investments, including, but not limited to, bank accounts, mutual funds, general and limited partnership interests in hedge funds (including hedge funds he manages), stocks, etc. (such income referred to as “Investment Income”).”

“Taxpayer has moved with his family (including his wife and children) to <Georgia>, his children are enrolled in school in Georgia, and his wife will be spending the majority of her time in Georgia. Based on these facts, Georgia will treat Taxpayer as a “legal resident” (i.e., domiciliary) as defined in O.C.G.A. § 48-7-1(10)(A)(i).”

“Due to Taxpayer’s business, Taxpayer will continue to work in <other state> and maintain his current home there. Based on these facts, Taxpayer will be (i) considered a resident of the state of <other state> pursuant to <other state statute> (either because <other state> will claim that Taxpayer is still domiciled in <other state> or that Taxpayer maintains a place of abode in <other state> and is present in the state for more than 183 days during the taxable year), and (ii) required under <other state> law to file a <other state> income tax return <form number>, and to report and pay to <other state> income taxes on both his Business Income and Investment Income.”

Issue

Whether the Taxpayer is entitled to claim the credit for taxes paid to other states on his Georgia resident income tax return for income taxes paid to <other state> on both his Business Income and Investment Income, pursuant to and subject to the calculation as required by O.C.G.A. § 48-7-28.

Authorities

O.C.G.A. § 48-7-28 states that:

A resident individual who has an established business in another state, has investment in property having a taxable situs in another state, or engages in employment in another state may deduct from the tax due upon the entire net income of the resident individual the tax paid upon the net income of the business, investment, or employment in another state when the business, investment, or employment is in a state that levies a tax upon net income. In no case shall the credit permitted under this Code section exceed the tax which would be payable to this state upon a like amount of taxable income.

Ga. Comp. R. & Regs. § 560-7-7-.01 provides in pertinent part that:

- (1) A resident individual having income from property owned, personal services, business done, or other activities in other States, and who pays income tax in more than one other State, shall combine into a single item the total of such taxable income and tax paid in the other States to determine the allowable credit.
- (2) The amount of income, amount of personal exemption, net taxable income, computation of tax, and the total tax shown as due and paid to other States must in each instance be in accordance with actual returns filed in such other states. Credits allowed by the other States reduce the tax paid in the other States and therefore reduce the amount eligible for the credit.

Ruling on Issue

Assuming the Taxpayer is domiciled in Georgia (a determination is not being made as to whether based on the facts the Taxpayer is domiciled in Georgia), the Taxpayer is entitled to claim the credit for taxes paid to other states on his Georgia resident income tax return for income taxes paid to <other state> on both his Business Income and Investment Income, pursuant to and subject to the calculation as required by O.C.G.A. § 48-7-28. Please note that credits allowed by <other state> (including the credit for taxes paid to other states if allowed in <other state>) would reduce the amount eligible for the credit in Georgia.

The opinions expressed in this ruling are based upon the information contained in your request and are limited to the specific transactions and taxpayer in question. A ruling has no precedential value except to the person to whom the ruling was issued and then only for the specific transaction addressed in the ruling. Should the circumstances regarding this transaction change, or differ materially from those represented, then this ruling may become invalid. In addition, please be advised that subsequent statutory or administrative rule changes or judicial interpretations of the statutes and rules upon which this advice is based may subject similar future transactions to a different tax treatment than those expressed in this response.