

ILLINOIS REGISTER  
DEPARTMENT OF REVENUE  
NOTICE OF PROPOSED AMENDMENT

- 1) Heading of the Part: Income Tax
- 2) Code Citation: 86 Ill. Adm. Code 100
- 3) Section Number: 100.7120                      Proposed Action: Amendment
- 4) Statutory Authority: 35 ILCS 5/701(d) and 5/1401
- 5) A Complete Description of the Subjects and Issues Involved: This rulemaking amends the regulation that provides guidance for employees claiming exemption from withholding from wages because they are residents of a state with whom Illinois has entered a reciprocal agreement, under which neither state will tax wages earned by residents of the other state. The current regulation uses an obsolete designation for the Form IL-W-5-NR used by the employee to claim the exemption, and does not allow employers to use electronic versions of the form. The proposed amendment fixes both of these problems.
- 6) Published studies or reports and sources of underlying data used to compose this rulemaking: None
- 7) Will this rulemaking replace any emergency rulemaking currently in effect? No
- 8) Does this rulemaking contain an automatic repeal date? No
- 9) Does this rulemaking contain incorporations by reference? No
- 10) Are there any other proposed rulemakings pending on this Part? Yes

<u>Section Number</u>	<u>Proposed Action</u>	<u>IL Register Citation</u>
100.2406	New Section	31 Ill. Reg. 15240; November 16, 2007
100.7040	Amendment	32 Ill. Reg. 12164; August 1, 2008
100.7300	Amendment	32 Ill. Reg. 12164; August 1, 2008
100.7310	Amendment	32 Ill. Reg. 12164; August 1, 2008
100.7320	Amendment	32 Ill. Reg. 12164; August 1, 2008
100.7325	New Section	32 Ill. Reg. 12164; August 1, 2008
100.7330	Amendment	32 Ill. Reg. 12164; August 1, 2008
100.7350	New Section	32 Ill. Reg. 12164; August 1, 2008
100.7360	New Section	32 Ill. Reg. 12164; August 1, 2008
100.7370	New Section	32 Ill. Reg. 12164; August 1, 2008
100.3371	New Section	32 Ill. Reg. 16037, October 3, 2008
100.2310	Amendment	32 Ill. Reg. 16309, October 10, 2008
100.5070	Amendment	32 Ill. Reg. 16682, October 17, 2008
100.5080	Amendment	32 Ill. Reg. 16682, October 17, 2008
100.2430	Amendment	32 Ill. Reg. 16951, October 24, 2008
100.5100	Amendment	
100.5140	Amendment	
100.5160	Amendment	

100.5180            New Section  
100.7035            New Section

- 11) Statement of Statewide Policy Objective: This rulemaking does not create a State mandate, nor does it modify any existing State mandates.
- 12) Time, Place and Manner in which interested persons may comment on this rulemaking: Persons who wish to submit comments on this rulemaking may submit them in writing by no later than 45 days after publication of this Notice to:

Paul Caselton  
Deputy General Counsel - Income Tax  
Illinois Department of Revenue  
Legal Services Office  
101 West Jefferson  
Springfield, Illinois 62794

(217) 524-3951

- 13) Initial Regulatory Flexibility Analysis:
- A) Types of small businesses, small municipalities and not-for-profit corporations affected: Any small business, municipality or not-for-profit corporation with an employee who is a resident of a state with a reciprocal agreement will benefit from being allowed to use electronic versions of the Form IL-W-5-NR rather than paper, if the employer wishes to do so.
- B) Reporting, bookkeeping or other procedures required for compliance: None
- C) Types of professional skills necessary for compliance: None
- 14) Regulatory Agenda on which this rulemaking was summarized: July 2008

The full text of the Proposed Amendment begins on the next page:

#### SUBPART R: AMOUNT EXEMPT FROM WITHHOLDING

##### **Section 100.7120 Exempt Withholding Under Reciprocal Agreements (IITA Section 702)**

- a) In general. Employees who are residents of a state with which a reciprocal agreement is in effect exempting residents of that state from withholding of Illinois tax on compensation paid in Illinois must file a signed certificate of their residency in order to receive the benefit of such exemption.
- b) Form of residency certificate. Form IL-W-5-NR, Employee's Statement of Non-Residence in Illinois, is the form prescribed for the certificate required to be filed under this section. Such certificate shall be prepared in accordance with the instructions applicable thereto, and shall set forth fully and clearly the data therein called for. Form IL-W-5-NR will be supplied to employers upon request to the Department. In lieu of the prescribed form of certificate, employers may prepare and use a form ~~the provisions of which are identical to those of that contains the same information required in the~~

prescribed form and, if not maintained in hardcopy, that meets the requirements of 86 Ill. Adm. Code 100.9530(d).

- c) Change in residency. An employee must notify his employer and file a new residency certificate or Illinois withholding exemption certificate, whichever is applicable, within ten days after his state of residency changes from the one named on his certificate.
- d) Annual determination: effective date; and duration of residency certificate. A certificate described under this section shall be subject to the same rules applicable to a withholding exemption certificate under 86 Ill. Adm. Code 100.7110(e), (f) and (g).

(Source: Amended at 33 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)