

## PRIVATE TAXPAYER RULING LR99-012

November 9, 1999

The following private taxpayer ruling is in response to your letter of October 18, 1999. Your letter requests a determination on whether annuity payments received from the Arizona State Lottery by a nonresident individual constitute non-Arizona source income that is not subject to Arizona income tax.

### Statement of facts:

Taxpayer won a prize in the Arizona State Lottery and is currently collecting annual payments of the prize winnings from the Arizona State Lottery. At the time that (Taxpayer) won the lottery prize he was a resident of Arizona. (Taxpayer) is currently a resident of Arizona but is contemplating moving from Arizona to another state at some point in the future.

(Taxpayer) has not employed the lottery annuity as capital in Arizona and possession or control of the annuity has not been localized with a business, trade, or profession in Arizona.

### Your position:

The annual lottery payments received by the taxpayer from the Arizona State Lottery are generated from an intangible asset. The taxpayer has not employed the lottery annuity as capital in Arizona nor has possession and control of the annuity been localized with a business, trade, or profession in Arizona such that the annuity has become an asset of a business, trade, or profession in Arizona. Accordingly, any annual lottery payments received by the taxpayer as a nonresident of Arizona will not constitute income from sources within the state of Arizona and will not be subject to the Arizona personal income tax.

### Applicable statutory provisions:

Arizona Revised Statutes (A.R.S.) § 43-405 provides that Arizona lottery payments which are subject to federal withholding are subject to Arizona withholding.

A.R.S. § 43-1091 provides that the Arizona gross income of a nonresident includes only that portion of federal adjusted gross income which represents income from sources within Arizona.

A.R.S. § 43-1092 provides that, except for income derived from an S corporation, income from intangibles is not income from sources within Arizona unless the property has acquired a business situs in Arizona.

A.R.S. § 43-1097 provides for the allocation of income and deductions during the tax year in which a taxpayer changes from a resident of Arizona to a nonresident.

Discussion:

Year in which taxpayer changes residency:

A.R.S. § 43-1097 provides for the allocation of income and deductions during the tax year in which a taxpayer changes from an Arizona resident to an Arizona nonresident. Under this provision a taxpayer's Arizona taxable income for the year of change must include all income recognized or realized during the portion of the tax year in which the taxpayer was an Arizona resident and any income accrued by a cash basis taxpayer prior to becoming a nonresident. Therefore, Arizona lottery winnings which are recognized, realized or accrued during the portion of the tax year in which the taxpayer was an Arizona resident must be included in Arizona taxable income for the year in which the change of residency occurs.

Years subsequent to the year in which taxpayer changes residency:

For Arizona income tax purposes, a nonresident individual is subject to Arizona income tax only on income that is derived from sources within Arizona. Income from intangibles is income from an Arizona source only if the intangible personal property has acquired a business situs within Arizona.

Arizona's statutes and administrative rules do not specifically address the Arizona taxation of Arizona lottery winnings paid to a nonresident. However, the nature of a state lottery ticket and the rights that accrue to the purchaser establish that it is a contractual relationship for value given under which the purchaser receives the right to payment from the state of an indefinite sum upon the happening of a subsequent condition. The lottery ticket itself has no intrinsic value nor is it the product of any work or underlying economic activity.

Annual annuity payments of lottery winnings are intangible income similar to other contractual obligations for the payment of money and come within the classification of intangible income under A.R.S. § 43-1092 unless the annuity has acquired an Arizona business situs.

Arizona withholding from Arizona lottery winnings:

A.R.S. § 43-405 provides that Arizona lottery payments which are subject to federal withholding are subject to Arizona withholding. Arizona's withholding requirements for Arizona lottery winnings are the same for nonresident individuals as they are for resident individuals. Therefore, Arizona lottery payments are subject to Arizona's withholding requirements regardless of whether the payments are subject to Arizona income tax.

## Conclusion and ruling:

On the basis of the information provided, we rule that annual lottery payments received by (Taxpayer) after becoming a nonresident of Arizona will not constitute income from sources within the state unless, at the time of payment, the annuity has acquired a business situs in Arizona. Accordingly, the annual payments will not be subject to Arizona income tax.

In the tax year in which (Taxpayer) changes from a resident to a nonresident, the annual lottery payment for that year would accrue (i.e., be fixed and determined) prior to his becoming a nonresident. Therefore, under A.R.S. § 43-1097, the payment is required to be included in Arizona taxable income.

Annual lottery payments are subject to Arizona income tax withholding regardless of whether the payments are subject to Arizona income tax.

The conclusions in this private taxpayer ruling do not extend beyond the facts as presented in the request for a private taxpayer ruling dated October 18, 1999.

This response is a private taxpayer ruling and the determinations herein are based solely on the facts provided in your request. The determinations in this taxpayer ruling are the present position of the department. The determinations are subject to change should the facts prove to be different on audit. If it is determined that undisclosed facts were substantial or material to the department's making of an accurate determination, this taxpayer ruling shall be null and void. Further, the determination is subject to future change depending on changes in statutes, administrative rules, case law or notification of a different department position.