

General Information Letter: Nonresident individuals are not required to seek prior permission from the Department to join in a composite return unless they have Illinois-sourced income that will not be reported on a composite return and that will require them to file their own Illinois returns.

March 3, 2008

Dear:

This is in response to your letter dated January 30, 2008, in which you request a letter ruling. The nature of your request and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 86 Ill. Adm. Code 1200.120(b) and (c), which may be found on the Department's web site at [www. tax.illinois.gov](http://www.tax.illinois.gov).

In your letter you have stated the following:

We are writing to you on behalf of each of the partnerships ("the partnerships") listed in Attachment A, to request permission to file a composite/group tax return in your state for the 2007 and subsequent tax years of the partnerships.

Permission is being requested since the partners would be included in more than one composite return and certain of the partners are not individuals and therefore are not traditionally included in composite returns. The purpose of a composite tax return is to ease the administrative burden on the state of having to process a large number of individual tax returns, as well as to ease the compliance efforts of the taxpayer filing the returns. Since we anticipate that a significant number of partners would elect to be included in the composite tax returns, the number of individual returns that will need to be filed with and processed by your state would diminish considerably. Based on the facts detailed below, we believe that a composite return should be allowed in this instance due to the administrative relief it will provide to each partnership and each state taxing authority.

It is important to note that the partnerships are not doing business in your state. Their sole source of income is their distributive share of income from investments in partnerships that principally invest in real estate and securities. That is none of the partnerships conduct any direct activities in your state; state source income is solely the result of the activities conducted by the underlying partnership.

Each partner electing to be included in the composite tax return would:

- be a limited partners and an inactive participant in one or more of the partnerships,
- be an individual or an individual who has invested in the partnership through an S corporation owned solely by the individual,
- be a full-year nonresident of your state,
- have no additional source income from your state,
- not file an individual return in your state,
- sign a statement affirming their eligibility and their election to be included in the

- composite tax return,
- waive the right to claim individual deductions, exemptions and credits that would otherwise be available, and
- agree to have the tax on sourced income calculated at your state's highest marginal tax rate.

As mentioned above, the sole source of income is from investment in underlying partnerships. Due to the partnerships' lack of control over what the underlying partnerships invest in, the partnerships may or may not have income sourced to your state in a given tax year. Therefore, although we are requesting permission to file composite tax returns in your state, the partnerships will ultimately only file composite tax returns in a given tax year to the extent that they have source income from your state during that tax year.

As previously mentioned we believe that your approval of this request will be beneficial to both your state and the partnerships. If your state approves this request, please sign in the place provided below and return this letter to our office. If your state chooses to deny this request, please contact us so that we can discuss this decision with you prior to receiving a written response.

Response

86 Ill. Admin. Code Section 100.5100(a) provides:

A composite return may be filed on behalf of nonresident individuals, trusts, and estates who derive income from Illinois and who are partners, or S Corporation shareholders, or who transact insurance business under a Lloyds plan of operation.

86 Ill. Admin. Code Section 100.5100(b) provides:

The right to be included in a composite return is limited to nonresident and resident individuals, trusts, and estates who are partners of the same partnership, shareholders of the same S corporation, or individuals transacting an insurance business in Illinois under a Lloyd's plan of operation. The eligibility of resident individuals, trusts, and estates is conditioned upon compliance with subsection (c) of this Regulation[, which requires written approval from the Department to include a resident in a composite return].

86 Ill. Admin. Code Section 100.5100(e) provides:

Nonresident individuals, trusts, and estates with Illinois source income other than from a partnership, S Corporation, or Lloyd's plan of operation may, but need not, be included in a composite return. If such nonresidents are included in a composite return, they will not be permitted to claim credits on their individual returns for their shares of the composite tax payments unless the authorized agent files a petition with the Department of Revenue requesting permission for the nonresidents to claim such credit and the petition is granted.

Taken together, these provisions allow each of the partnerships in your request to include any nonresident individual partner in a composite return, without first requesting permission from the Department. Written permission from the Department is required for a nonresident individual only if that individual will be filing his or her own Illinois income tax return, because that individual will be required to report all of his or her Illinois-sourced income on that return and, without permission to claim a credit for taxes paid on the composite return, would be taxed twice on the income reported on the composite return. That situation does not arise for a partner whose only sources of Illinois income are all reported on one or more composite returns, and no permission is needed from the Department for such partners to join in all of the composite returns necessary to report all of his or her Illinois-sourced income.

The filing of a composite return is elective each year, as is the decision to join in a composite return. Accordingly, a partnership need not file a composite return for any year for which it has no Illinois sourced income or for which no partner has elected to join in the composite return, and may resume filing composite returns in a subsequent year.

Please note that the regulations do not permit a partnership to include on a composite return any Subchapter S corporation that is a partner in the partnership, or any shareholder of the Subchapter S corporation. Only direct partners in a partnership may be included in a composite return filed by that partnership.

As stated above, this is a general information letter which does not constitute a statement of policy that applies, interprets or prescribes the tax laws, and it is not binding on the Department. If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b). If you have any further questions, you may contact me at (217) 782-7055.

Sincerely,

Paul S. Caselton
Deputy General Counsel – Income Tax