

General Information Letter: Throwback rule applied to various situations.

July 21, 2008

Dear:

This is in response to your letter dated June 10, 2008, in which you request information regarding Illinois income tax. The nature of your inquiry and the information provided requires that we respond with a General Information Letter (GIL). A GIL 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 accessed from the Department's web site at [www.ILtax.com](http://www.ILtax.com).

Your letter states as follows:

We have a client who manufactures truck parts overseas then imports and sells them to original equipment manufacturers and wholesale to customers in various locations. The corporation has offices in four states and receives parts via container in STATE X, STATE Y and STATE Z. Those parts are then shipped to the warehouse in Illinois, STATE A or STATE B, or dropped shipped directly to customers. We are trying to determine the sales allocation for income tax purposes to the various states. We will give you the full information of the company structure, and its activities in various states.

Illinois

The company's corporate office is in Illinois. There is both a warehouse facility and a sales office in the state. All orders are processed in Illinois.

STATE A

There is a warehouse facility and a sales office in the state.

STATE B

The former corporate offices were located here. The company still maintains sales and engineering offices in the state. There is also an overflow/emergency storage facility in the state.

STATE C

There is a sales office in the state. There is no other presence in the state.

STATE X

Parts are received by container and either sent to the warehouses in Illinois, STATE A and STATE B or are direct shipped to customers in STATE X and other non-taxable states. There is no physical presence in the state.

STATE Y

Parts are received by container and either sent to the warehouse in Illinois, STATE A and STATE B or are direct shipped to customers in STATE Y and other non-taxable states. There is no physical presence in the state.

STATE Z

Parts are received by container periodically and shipped out of state. There are no in-state shipments.

There are a variety of scenarios that we would like you to address. We will state them in a Q&A format, with the “answer” being our interpretation of the law. Please let us know if our interpretation is correct, and if not, how to handle the situation.

Sales originate in Illinois

Q-1: The parts are shipped from Illinois to a purchaser in Illinois.

A-1: The income is taxable to Illinois.

Q-2: The parts are shipped from Illinois and the purchaser is the US Government.

A-2: The income is taxable to Illinois.

Q-3: The parts are shipped from Illinois to another state and the corporation is not taxable in that state, for example, STATE D.

A-3: The income is taxable to Illinois.

Q-4: The parts are shipped from Illinois to a state in which the corporation is taxable, for example, STATE A or STATE C.

A-4: The income is not taxable to Illinois.

Q-5: Parts are shipped from a non-taxable state to a non-taxable state. Example: direct shipped from STATE X to STATE W.

A-5: The income is taxable to Illinois.

Q-6: Parts are shipped from a non-taxable state to a taxable state other than Illinois. Example: direct shipped from STATE X to an STATE A customer.

A-6: The income is not taxable to Illinois.

Sales originate in STATE A

Q-1: The parts are shipped from STATE A to a purchaser in STATE A.

A-1: The income is not taxable to Illinois.

Q-2: The parts are shipped from STATE A and the purchaser is the US Government.

A-2: The income is not taxable to Illinois.

Q-3: Parts are shipped from STATE A to an Illinois customer.

A-3: The income is taxable to Illinois.

Q-4: Parts are shipped from STATE A to a non-taxable state.

A-4: The income is not taxable to Illinois.

Q-5: Parts are shipped from a non-taxable state to a non-taxable state. Example: direct shipped from STATE X to STATE W.

A-5: The income is not taxable to Illinois.

Sales originate in STATE B

Same treatment as STATE A.

Sales originate in STATE C

Q-1: The parts are shipped from Illinois to a state in which the corporation is taxable, in this case, C.

A-1: The income is not taxable to Illinois.

Q-2: The parts are shipped from Illinois to another state and the corporation is not taxable in that state, for example, STATE E.

A-2: The income is not taxable to Illinois.

Q-3: The parts are shipped from Illinois and the purchaser is the US Government.

A-3: The income is taxable to Illinois.

Q-4: Parts are shipped from a non-taxable state to a non-taxable state. Example: direct shipped from STATE X to STATE E.

A-4: The income is not taxable to Illinois.

STATE X

Q-1: Parts are shipped from another state to a customer in that state. Example: direct shipped from STATE X to a STATE X customer.

A-1: The income is not taxable to Illinois.

Q-2: Parts are shipped from another state to the US Government. Example: direct shipped from STATE X to US Government.

A-2: The income is not taxable to Illinois.

Q-3: Parts are shipped from STATE X to a non-taxable state – order originated in Illinois.

A-3: The income is taxable to Illinois.

STATE Y

Same treatment as STATE X.

STATE Z

Same treatment as STATE X (except that there are no in-state shipments).

These are the only scenarios that we could think of, but perhaps there are more. Please address each of the examples and provide us with guidance regarding the correct taxable location.

**RULING**

A corporation is liable for Illinois income tax under Section 201 of the Illinois Income Tax Act ("IITA"; 35 ILCS 5/201) if it derives "net income" as defined under IITA Section 202. IITA Section 202 defines net income as that portion of the taxpayer's "base income," as defined in Section 203, which is allocated or apportioned to Illinois under the provisions of Article 3 of the IITA, less certain deductions. The above provisions may be accessed from the Department's website.

Base income that constitutes nonbusiness income is allocated to Illinois under IITA Sections 301(c)(2) and 303. Base income that constitutes business income is apportioned to Illinois under IITA

Section 304. IITA Section 304(a) provides for taxable years ending on or after December 31, 2000 that the apportionment factor for a corporation deriving business income from Illinois and one or more other states (other than an insurance company, financial organization, or transportation company) shall be equal to its sales factor. Section 304(a)(3)(A) defines the sales factor as a fraction, the numerator of which is the total sales of the person in Illinois during the taxable year, and the denominator of which is the total sales of the person everywhere. Section 304(a)(3)(B) of the IITA provides that sales of tangible personal property are in Illinois if, (i) the property is delivered or shipped to a purchaser, other than the U.S. government, within this State, regardless of the f.o.b. point or other conditions of sale, or (ii) the property is shipped from an office, store, warehouse, factory or other place of storage in this State and either the purchaser is the United States government or the person is not taxable in the state of the purchaser.

Department Regulations Section 100.3370(c)(1)(B) through (D) clarify the rules in Section 304(a)(3)(B) as follows:

- B) Property shall be deemed to be delivered or shipped to a purchaser within this State if the recipient is located in this State, even though the property is ordered from outside this State.

Example: A corporation, with inventory in State A, sold \$100,000 of its products to a purchaser having branch stores in several states including this State. The order for the purchase was placed by the purchaser's central purchasing department located in State B. \$25,000 of the purchase order was shipped directly to purchaser's branch store in this State. The branch store in this State is the "purchaser within this State" with respect to \$25,000 of the corporation's sales.

- C) Property is delivered or shipped to a purchaser within this State if the shipment terminates in this State, even though the property is subsequently transferred by the purchaser to another state.

Example: A corporation makes a sale to a purchaser who maintains a central warehouse in this State at which all merchandise purchases are received. The purchaser reships the goods to its branch stores in other states for sale. All of the corporation's products shipped to the purchaser's warehouse in this State is property "delivered or shipped to a purchaser within this State."

- D) The term "purchaser within this State" shall include the ultimate recipient of the property if the person in this State, at the designation of the purchaser, delivers to or has the property shipped to the ultimate recipient within this State.

Example: A corporation in this State sold merchandise to a purchaser in State A. The corporation directed the manufacturer or supplier of the merchandise in State B to ship the merchandise to the purchaser's customer in this State pursuant to purchaser's instructions. The sale by the corporation is "in this State."

In addition, Department Regulations Section 100.3380(c)(1) provides the following special rule regarding the sales factor.

In the case of sales where neither the origin nor the destination of the sale is within this State, and the person is taxable in neither the state of origin nor the state of destination, the sale will be attributed to this State (and included in the numerator of the sales factor) if the person's activities in this State in connection with the sales are not protected by the provisions of P.L. 86-272, 15 USC 381-385. Although P.L. 86-272, by its terms covers only sales of tangible personal property, its rules regarding a state's power to impose a net income tax, for purposes of this special rule, will be applied whether the sale is of tangible or intangible property.

Example: A corporation's salesman operates out of an office in Illinois. He regularly calls on customers both within and without Illinois. Orders are approved by him and transmitted to the corporation's headquarters in State A. If the property sold by the salesman is shipped from a state in which the corporation is not taxable to a purchaser in a state in which the corporation is not taxable, the sale is attributed to Illinois.

As the above example illustrates, the "state of origin" state referred to in the regulation means the state in which is located the office, store, warehouse, factory, or other place of storage from which the property is shipped. See also IT 03-0003-PLR ("The term 'state of origin' refers to the provision in the throwback rule in Section 304(a)(3)(B)(ii) of the Illinois Income Tax Act ... which allocates gross proceeds from a sale of tangible personal property to the Illinois sales factor numerator if the seller is not subject to tax in the destination state and 'the property is shipped from an office, store, warehouse, factory or other place of storage in this State.' i.e. if Illinois is the state of origin.") The origin of a sale is not the location of the sales office that negotiated the sale.

Except as set forth below, your answers generally reflect the correct interpretation of Illinois law.

With respect to "Q-2" under "Sales originate in STATE C," gross receipts from sales shipped from the Illinois warehouse to another state in which the corporation is not taxable must be included in the numerator of the Illinois sales factor under IITA Section 304(a)(3)(B)(ii).

In regards to each question that assumes as facts that goods are shipped from a state in which the corporation is not taxable to a state in which the corporation is not taxable, gross receipts from such sales must be included in the Illinois numerator under Department Regulations Section 100.3380(c)(1) if the corporation's activities in Illinois in connection with such sales are not protected by the provisions of P.L. 86-272. Your letter indicates that all orders are processed in Illinois, which suggests that the corporation's activities in Illinois with respect to all sales exceed the protection afforded under P.L. 86-272. In that case, the gross receipts from sales shipped from a non-taxable state to a non-taxable state must be included in the numerator of the corporation's Illinois sales factor.

As stated above, this is a GIL. A GIL 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 have further questions regarding this GIL, please call (217) 782-7055. If you have additional questions regarding Illinois income tax laws, please visit the Department's web site at [www.Iltax.com](http://www.Iltax.com).

Sincerely,

Brian L. Stocker  
Associate Counsel