

General Information Letter: Nexus issues are not a proper subject for letter ruling.

October 7, 2008

Dear:

This is in response to your letter dated September 12, 2008 in which you state the following:

CORPORATION1, Inc., an STATE corporation, (TIN XX-XXXXXXX) is an insurance agency with locations in STATE1 and STATE2. I wish to determine if we have nexus in your state for corporate income taxes. We have been filing Form IL-1120 and filed a final return for 2007 since effective 1/1/2008, the parent company became an S corporation and all 2008 tax returns will be filed under the parent company name and TIN.

Your website states that you do not have a nexus questionnaire. I have read Illinois Department of Revenue Regulation Title 86, Part 100, Section 100.9720 on Nexus. Each state interprets Public Law 86-272 differently and my review of the IL Section 100.9720 does not answer the question of nexus for our company.

I called the IL Dept. of Revenue Customer Assistance line and was advised to send a letter to Legal Services describing CORPORATION1's business in Illinois to get a determination on nexus.

CORPORATION1, Inc. is an independent insurance agency. We represent many insurance carriers and we work with our business clients to put together a program of insurance coverage that matches their need for property and casualty risk management. While most of our business is with companies based in the Southwest, we have a program that is approved by CORPORATION2 for CORPORATION2 franchise owner-operators nationwide. The revenue that we have been reporting as Illinois revenue is commissions paid to us by insurance carriers for the policies we write on Illinois CORPORATION2 locations. We do not visit client locations in Illinois although our management team visits your state for meetings with COMPANY, one of our carriers, and with CORPORATION2 executives. We do not have a location in your state. We do not have employees in your state.

Our business contact with Illinois clients is transacted via telephone, email, fax, and mail. Proposals are emailed or faxed to potential clients. Our representatives in STATE1 use the telephone to call potential clients but all orders must be received in writing. We accept written orders via mail, email or fax.

According to the Department of Revenue ("Department") regulations, the Department may issue only two types of letter rulings: Private Letter Rulings ("PLR") and General Information Letters ("GIL"). The regulations explaining these two types of rulings issued by the Department can be found in 2 Ill. Adm. Code §1200, or on the website <http://www.tax.illinois.gov/LegalInformation/regs/part1200>.

Due to the nature of your inquiry and the information presented in your letter, we are required to respond with a GIL. GILs are designed to provide background information on specific topics. GILs, however, are not binding on the Department.

Section 201 of the Illinois Income Tax Act ("IITA"), 35 ILCS 5/101 et seq, imposes a tax measured by net income on taxpayers for the privilege of earning or receiving income in this State. The Due

Process and Commerce Clauses of the Federal Constitution limit the power of Illinois to subject foreign taxpayers to Illinois tax. The Due Process Clause requires that there exist some minimum connection between a state and the person, property, or transaction it seeks to tax (Quill Corp. v. North Dakota, 504 U.S. 298, 112 S.Ct. 1904 (1992)). Similarly, the Commerce Clause requires that the tax be applied to an activity with a substantial nexus with the taxing state. Id.

You ask whether your S corporation has nexus with the State of Illinois as a result of receiving commissions paid for insuring various Illinois CORPORATION2 locations and sending management teams for meetings with an insurance carrier and CORPORATION2 executives. The question of nexus is highly fact-dependent. Therefore, the Department does not issue rulings regarding whether a taxpayer has nexus with the State. Such a determination can only be made in the context of an audit where a Department auditor has access to all relevant facts and circumstances.

The facts recited in your letter indicate that CORPORATION1, Inc. will be required to apportion the commission income to Illinois. This is because the sale of insurance for various Illinois CORPORATION2 locations are viewed as sales of services received in this State. Based on the information in your letter, IITA Section 304(a)(3)(C-5)(iv) is most applicable to your situation. Accordingly, rather than asking whether your S corporation has nexus, a more pertinent question is whether the services provided by CORPORATION1, Inc. are received in Illinois. IITA Section 304(a)(3)(C-5)(iv) states as follows:

(C-5) For taxable years ending before December 31, 2008, sales, other than sales governed by paragraphs (B), (B-1), and (B-2), are in this State if:

...

(iv) Sales of services are in this State if the services are received in this State. For the purposes of this section, gross receipts from the performance of services provided to a corporation, partnership, or trust may only be attributed to a state where that corporation, partnership, or trust has a fixed place of business. If the state where the services are received is not readily determinable or is a state where the corporation, partnership, or trust receiving the service does not have a fixed place of business, the services shall be deemed to be received at the location of the office of the customer from which the services were ordered in the regular course of the customer's trade or business. If the ordering office cannot be determined, the services shall be deemed to be received at the office of the customer to which the services are billed. If the taxpayer is not taxable in the state in which the services are received, the sale must be excluded from both the numerator and the denominator of the sales factor. ...

Your letter states that your management team visits with your insurance carrier and CORPORATION2 executives in Illinois. Although your letter does not specify what these meetings are about, your letter does state that your company puts "together a program of insurance coverage that matches their need for property and casualty risk management." You further state that "Illinois revenue is commissions paid to [you] by insurance carriers for the policies [you] write on Illinois CORPORATION2 locations." Pursuant to IITA Section 304(a)(3)(C-5)(iv), the Illinois Department of Revenue takes the position that where the subject matter of the service is real property, the service is received in the State in which the real property is located. Thus, income from the insurance services

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provided to Illinois CORPORATION2 locations will be allocable to Illinois. As long as CORPORATION1, Inc. continues to sell insurance coverage for various Illinois business locations, Illinois returns shall be filed with the Illinois Department of Revenue.

As stated above, this is a general information letter which does not constitute a statement of policy that either applies, interprets or prescribes tax law. It is not binding on the Department. Should you have additional questions, please do not hesitate to contact our office.

Sincerely,

Heidi Scott  
Staff Attorney -- Income Tax