

General Information Letter: The new apportionment formula, as amended by Public Act 95-0707, applies to taxable years ending on or after December 31, 2008.

December 29, 2008

Dear:

This is in response to your letter dated December 18, 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:

I am writing to inquire about Illinois Code Section 304(d)(1). There are three versions of this code section and I would like to know which version my client falls under. The second version is effective August 16, 2007 and the third version is effective January 11, 2008. Please clarify what the effective date means. Does it apply to tax years ending after January 11 or tax years beginning after January 11. My client started a long haul trucking business April 2008 and is a calendar year taxpayer. Which version of Code Section 304(d)(1) will my client be subject to?

Also, do you require uniform apportionment across pass-through entities?

In a telephone conversation on December 29, 2008, you explained that your question was whether commonly-owned pass-through entities are required to file a single Illinois income tax return, which includes affiliates who have no nexus with Illinois.

Response

Section 304(d) of the Illinois Income Tax Act (35 ILCS 5/304(d)), as amended by Public Act 95-0707 (effective January 11, 2008) provides:

For taxable years ending before December 31, 2008, business income derived from furnishing transportation services shall be apportioned to this State in accordance with paragraphs (1) and (2):

(1) Such business income (other than that derived from transportation by pipeline) shall be apportioned to this State by multiplying such income by a fraction, the numerator of which is the revenue miles of the person in this State, and the denominator of which is the revenue miles of the person everywhere. For purposes of this paragraph, a revenue mile is the transportation of 1 passenger or 1 net ton of freight the distance of 1 mile for a consideration. Where a person is engaged in the transportation of both passengers and freight, the fraction above referred to shall be determined by means of an average of the passenger revenue mile fraction and the freight revenue mile fraction, weighted to reflect the person's

(A) relative railway operating income from total passenger and total freight service, as reported to the Interstate Commerce Commission, in the case of transportation by railroad, and

(B) relative gross receipts from passenger and freight transportation, in case of transportation other than by railroad.

(2) Such business income derived from transportation by pipeline shall be apportioned to this State by multiplying such income by a fraction, the numerator of which is the revenue miles of the person in this State, and the denominator of which is the revenue miles of the person everywhere. For the purposes of this paragraph, a revenue mile is the transportation by pipeline of 1 barrel of oil, 1,000 cubic feet of gas, or of any specified quantity of any other substance, the distance of 1 mile for a consideration.

(3) For taxable years ending on or after December 31, 2008, business income derived from providing transportation services other than airline services shall be apportioned to this State by using a fraction, (a) the numerator of which shall be (i) all receipts from any movement or shipment of people, goods, mail, oil, gas, or any other substance (other than by airline) that both originates and terminates in this State, plus (ii) that portion of the person's gross receipts from movements or shipments of people, goods, mail, oil, gas, or any other substance (other than by airline) that originates in one state or jurisdiction and terminates in another state or jurisdiction, that is determined by the ratio that the miles traveled in this State bears to total miles everywhere and (b) the denominator of which shall be all revenue derived from the movement or shipment of people, goods, mail, oil, gas, or any other substance (other than by airline). Where a taxpayer is engaged in the transportation of both passengers and freight, the fraction above referred to shall first be determined separately for passenger miles and freight miles. Then an average of the passenger miles fraction and the freight miles fraction shall be weighted to reflect the taxpayer's:

(A) relative railway operating income from total passenger and total freight service, as reported to the Surface Transportation Board, in the case of transportation by railroad; and

(B) relative gross receipts from passenger and freight transportation, in case of transportation other than by railroad.

(4) For taxable years ending on or after December 31, 2008, business income derived from furnishing airline transportation services shall be apportioned to this State by multiplying such income by a fraction, the numerator of which is the revenue miles of the person in this State, and the denominator of which is the revenue miles of the person everywhere. For purposes of this paragraph, a revenue mile is the transportation of one passenger or one net ton of freight the distance of one mile for a consideration. If a person is engaged in the transportation of both passengers and freight, the fraction above referred to shall be determined by means of an average of the passenger revenue mile fraction and the freight revenue mile fraction, weighted to reflect the person's relative gross receipts from passenger and freight airline transportation. (emphasis added)

For its taxable year ending December 31, 2008, a transportation company that does not provide airline services would apportion all of its income under Section 304(d)(3), as expressly stated in that provision.

Regarding the filing of a single return by commonly-owned pass-through entities, Section 502(e) of

the Illinois Income Tax Act (35 ILCS 5/502(e)) requires a single return to be filed by corporations (other than Subchapter S corporations) that are members of a unitary business group. No provision requires or allows a single return to be filed on behalf of partnerships, Subchapter S corporations or trusts. Each such entity must file its own return, if it has nexus with Illinois and its liability has not been paid by withholding under Section 709.5 of the Illinois Income Tax Act (35 ILCS 5/709.5, requiring withholding by partnerships, Subchapter S corporations or trusts from their Illinois business income distributable to nonresident owners) or by a composite return filed under Section 502(f) (35 ILCS 5/502(f), allowing Lloyds plans to file composite returns on behalf of all of their members and pay tax on their income derived from the Lloyds plan operations in Illinois).

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