

General Information Letter: Services performed on or with respect to tangible personal property located in Illinois are, as a general rule, received in Illinois.

October 15, 2008

Dear:

This is in response to your letter dated June 10, 2008, in which you request 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:

This is a request for a general information letter concerning the application of Public Act 95-0707 with respect to the sourcing of services for Illinois Income Tax purposes.

Public Act 95-0707 amends Section 304(a)(3)(C-5)(iv) of the Illinois Income Tax Act in order to change the sourcing of services to the location of where the service is received by the customer. However, when such service is provided to a corporation, partnership or trust, the sourcing can only be made to a state where such entity 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, then the state such entity ordered the service in the regular course of business shall be deemed the received location. However, if the order locations cannot be determined, the customer office the bill is sent to shall be used. There is no throwback provision in this Section. Rather, if the taxpayer is not taxable in a state the services are received, then the sale is excluded from both the numerator and denominator of the sales factor.

My client is an Illinois-based company that provides administrative services, maintenance and repair assistance services, and other related services to lessees of mobile property (hereafter, "Administrative Services"). This includes, but is not limited to, paying bills and other amounts due on behalf of the customer, arranging for maintenance and repairs on behalf of the customer, preparing documents, and registering the mobile property or obtaining necessary government licenses on behalf of the customer.

The customer pays my client a monthly fee for the Administrative Services provided. It also reimburses my client for the expenses and fees my client pays on behalf of the customer. An Administrative Services Agreement outlining the services provided and the fees related thereto is signed by my client and its customers.

The above Administrative Services are performed exclusively in Illinois. My client is a corporation whose customers are located throughout the country and my client has nexus in some of these states.

Based on the new sourcing provisions of the Illinois Income Tax as instituted by Public Act 95-0707, my client will now be required to source its Administrative Services to the States its customers receive its services. As a result, its Illinois allocation factor will drop considerably. Many of the states in which my client's customers are located follow the "cost of performance" rule for allocation of services, so these services will not be allocated to such states under their

income tax rules. However, it is our understanding that this is meaningless for Illinois tax purposes since each state's income tax statute stands on its own and should not effect how the Illinois Income Tax is applied. Moreover, it is our understanding that for those states that my client's customers receive such services but for which my client has no nexus, the sales of such service should be excluded from the sales factor altogether.

Based on the facts and law stated above, please confirm that for tax years ending on or after December 31, 2008.

A. My client will only have to include in the numerator of its sales factor those sales of Administrative Services mentioned above that are provided to customers of my client who will receive such services in Illinois.

B. For sales of services to customers who receive those services in a state my client does not have nexus, such sales should be excluded from the numerator and denominator of the sales factor altogether.

C. Because my client's Administrative Services relate to mobile property, please instruct whether the received location should be based on the location or base of the mobile property or the place of business of the customer that ordered the service (or if unknown, the customer's billing address).

## **RULING**

Section 304(a)(3)(C-5) of the Illinois Income Tax Act ("IITA"; 35 ILCS 5/304(a)(3)(C-5) states in pertinent part as follows:

For taxable years ending on or after December 31, 2008, sales, other than sales governed by paragraphs (B) [relating to sales of tangible personal property], (B-1) [relating to gross receipts from patents, copyrights, trademarks, and similar intangible property], (B-2) [same], and (B-5) [relating to sales of telecommunications service], are in this State if any of the following criteria are met:

(i) ...

(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.

Under this provision, gross receipts from sales of services are generally assigned to the numerator and denominator of the Illinois sales factor if the services are received in Illinois. However, in the case of services provided to a corporation, partnership, or trust, gross receipts from services received in Illinois are not included in the numerator of the Illinois sales factor unless the corporation, partnership, or trust maintains a fixed place of business in Illinois. In addition, gross receipts from services received outside of Illinois may be deemed received in Illinois, and thus included in the numerator of the Illinois sales factor, if the recipient corporation, partnership, or trust does not maintain a fixed place of business in the state in which the services are actually received and either (i) the customer ordered the services in the regular course of business from its Illinois office, or (ii) if the ordering office cannot be determined, the services are billed to the customer's Illinois office. Finally, where a taxpayer is not taxable in the state in which the services are actually or deemed received, the associated gross receipts must be excluded from both the numerator and denominator of the Illinois sales factor. In regards to the location where services are received, where the subject matter of the service is an item of tangible personal property, the service is received in the state where possession of the property is returned to the recipient of the service under the principles set forth in Department Regulations Section 100.3370(c)(1) for determining the destination state in the case of a sale of the same property. For instance, where the destination of the property serviced is the service recipient's Illinois place of business, the service is received in Illinois. See IT 03-0034-GIL.

Applying these rules to the facts as stated in your letter, the subject matter of the administrative services performed by the taxpayer is the customer's tangible personal property. Accordingly, if the property in the hands of the taxpayer's customer is based in Illinois, then the taxpayer's services related to that property are received in Illinois. If the property in the hands of the taxpayer's customer is based outside Illinois, then the services related to that property are received outside Illinois. In addition, in order to identify the state in which the services are received, it must be possible to determine the extent to which an item of gross receipts relates to services with respect to tangible personal property based in Illinois and tangible personal property based in other states. In other words, it must be possible to identify or otherwise allocate the taxpayer's monthly fee from a customer to services with respect to the customer's tangible personal property based in Illinois and to property based in other states. If such a determination cannot be made, then the state in which the services are received is not readily determinable. In that case, the services are deemed to be received at either (i) 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, or (ii) if the ordering office cannot be determined, the office of the customer to which the services are billed. Finally, if the taxpayer is not taxable in the state in which the services are actually or deemed received, the gross receipts must be excluded from both the numerator and denominator of the 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 questions regarding this GIL you may contact Legal Services at (217) 782-7055. If you have further questions related to Illinois income tax laws, visit our website at [www.revenue.state.il.us](http://www.revenue.state.il.us) or contact the Department's Taxpayer Information Division at (217) 782-3336.

Sincerely,

Brian L. Stocker  
Staff Attorney (Income Tax)