

General Information Letter: Grant of alternative apportionment petition in IT 05-0002-PLR and IT 05-0007-PLR is revoked due to change in law for tax years ending on or after December 31, 2008.

December 9, 2008

Dear:

This is in response to your letter dated October 31, 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.

In your letter you have stated the following:

I am writing to request confirmation that the private letter ruling issued to CORPORATION ("CORPORATION") and its subsidiaries allowing the use of an alternative apportionment method to calculate their Illinois income and replacement tax became inapplicable on January 1, 2008 for tax years ending on or after December 31, 2008, based on the enactment of Public Acts 95-0233 and 95-0707.

CORPORATION is an energy holding company that owns rate-regulated electric and gas utility companies and non-rate regulated electric generation companies in Illinois and STATE. CORPORATION petitioned for and received permission from the Department to use an alternative apportionment method beginning with the 1998 taxable year.

Over the years, CORPORATION has filed petitions with the Department to disclose factual developments and has received private letter rulings reaffirming the Department's permission to use the alternative apportionment method. The most recent private letter ruling in this process was issued on October 17, 2005 (copy attached). The ruling grants the use of alternative apportionment for taxable year ending December 31, 2004 and for Illinois income tax returns due (including extensions) on or after October 11, 2005. In this ruling, the Department states:

This Private Letter Ruling is revoked and will cease to bind the Department 10 years after the date of this letter under the provisions of 2 Ill. Adm. Code 1200.110(e) or earlier if there is a pertinent change in statutory law, case law, rules or in the factual representations recited in this ruling.

In August 2007, the Governor of Illinois signed Senate Bill 1544 (Public Act 95-0233) effective for taxable years ending on or after December 31, 2008. In pertinent part, the Act provides for market based sourcing of utility service for Illinois income tax purposes. In January 2008, the Governor of Illinois signed Senate Bill 783 (Public Act 95-0707) which provides, in pertinent part, that regulations shall be promulgated for the sourcing of utility service for years ending on or after December 31, 2008 to reflect the shift from income-producing greater costs of performance to market based sourcing for Illinois income tax purposes.

Based on the aforementioned law changes, which provide for the calculation of Illinois income tax for CORPORATION, I am requesting confirmation that the private letter ruling issued on October 17, 2005 became inapplicable for tax periods ending on or after December 31, 2008. The confirmation requested is consistent with our conversation on October 28, 2008, during which you initially noted that the private letter ruling was no longer binding for taxable year 2008 and thereafter due to the changes in Illinois income tax law.

Response

As noted in your letter, the Department has issued private letter rulings IT 05-0002-PLR (dated March 29, 2005) and IT 05-0007-PLR (dated October 17, 2005), granting the petitions of CORPORATION under Section 304(f) of the Illinois Income Tax Act (35 ILCS 5/304) to use an alternative apportionment method. Section 304(f) authorizes the Department to allow CORPORATION and its unitary business group to use an alternative apportionment formula when sales factor rules prescribed in Section 304(a) of the Illinois Income Tax Act “do not fairly represent the extent of a person's business activity in this State.”

The sales factor provisions in Section 304(a) that were applicable to CORPORATION and its unitary business group, and which were the subject of the petitions under Section 304(f), were amended by Public Act 95-0233 and Public Act 95-0707, effective for taxable years ending on and after December 31, 2008. CORPORATION has not asserted or provided any evidence that the new sales factor provisions do not “fairly represent” its business activity within this State. Accordingly, the continued use of an alternative method of apportionment is no longer appropriate, and the private letter rulings granting CORPORATION's petitions to use an alternative apportionment method are hereby revoked and are no longer valid, effective for taxable years ending on and after December 31, 2008.

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