

General Information Letter: The IITA authorizes composite returns to be filed only for the immediate, individual owners of a Subchapter S corporation or partnership.

December 31, 2008

Dear:

This is in response to your letter dated December 9, 2008. The nature of your letter and the information provided require 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 (footnote omitted):

We are writing to request permission to include certain non-individual entities in a composite return for your state.

The facts are as follows:

COMPANY1, LLC ("COMPANY1 LLC") should have nexus in your state for 2008 income tax purposes. An organizational chart is attached to illustrate the ownership structure described below.

COMPANY2 LLC ("COMPANY2 LLC") is a STATE1 organized Limited Liability Company that is treated as a partnership for federal and your state's income tax purposes. COMPANY2 LLC has (2) members, COMPANY3, Inc. and COMPANY1, LLC ("COMPANY1") with profit interests of 0.01% and 99.99%, respectively. COMPANY1 LLC is a STATE1 organized Limited Liability Company that is treated as a partnership for federal and state income tax purposes.

COMPANY1 ownership structure is as follows:

6 individual members with a combined .32% profit interest. The individual members consist of (4) STATE2 residents, (1) STATE3 resident, and (1) STATE4 resident.

COMPANY3, Inc. with a 65.72% profit interest.

COMPANY4, LLC with a 16.98% profit interest.

COMPANY5, LLC with a 16.98% profit interest.

COMPANY4, LLC and COMPANY5, LLC are STATE2 organized Limited Liability Companies that are treated as partnerships for federal and your state's income tax purposes.

COMPANY4 and COMPANY5 are owned by (2) complex trusts. Each trust owns a 50% capital interest in COMPANY4 and 50% capital interest in COMPANY5. The trusts were organized by a STATE2 resident, Mr. Z. The beneficiaries of the complex trusts are STATE2 and STATE5 residents that are related parties under IRC Section 267.

The only source income from your state is the flow-through income from COMPANY2 LLC.

COMPANY2 LLC and COMPANY1 LLC are expecting to file in over 25 states in 2008 and subsequent years. Filing of composite returns by COMPANY1 LLC should substantially reduce the administrative burden on each state's Department of Revenue as well as the entity's accounting department.

#### Ruling Requested

1. We request permission for COMPANY1 LLC to include COMPANY4, LLC and COMPANY5, LLC, both partnerships, in a composite return for the 2008 tax year and future filing years.
2. We request permission for COMPANY1 LLC to include COMPANY4, LLC and COMPANY5, LLC in the remittance of composite estimated tax payments for the 2008 tax year and future filing years.
3. We request permission for COMPANY1 LLC to electronically remit composite estimated tax payments.

Due to the time constraints of making estimated tax payments for the 4<sup>th</sup> quarter we respectfully request a written ruling on this matter within (10) days from receipt of this letter.

#### **RULING**

The general rule under Section 502(a) of the Illinois Income Tax Act ("the IITA"; 35 ILCS 5/101 *et seq.*) is that every person liable for Illinois income tax must file an income tax return. Section 502(f) of the IITA creates an exception to this general rule in the case of certain taxpayers who are partners or S corporation shareholders. The section provides:

The Department may promulgate regulations to permit nonresident individual partners of the same partnership, nonresident Subchapter S corporation shareholders of the same Subchapter S corporation, and nonresident individuals transacting an insurance business in Illinois under a Lloyds plan of operation, and nonresident individual members of the same limited liability company that is treated as a partnership under Section 1501(a)(16) of [the IITA], to file composite individual income tax returns reflecting the composite income of such individuals allocable to Illinois and to make composite individual income tax payments.

Under the authority of IITA Section 502(f), Illinois Income Tax Regulations Section 100.5100 sets out the requirements for a taxpayer to be eligible to be included on a composite return. Section 100.5100(a) states:

In general. A composite return may be filed on behalf of nonresident individuals, trusts, and estates who derive income from Illinois and who are partners, or S corporation shareholders, or who transact insurance business under a Lloyds plan of operation. The respective partnership, S corporation or insurance business shall file such composite return and shall make composite income tax payments.

Section 100.5100(b) states:

Eligibility. The right to be included in a composite return is limited to nonresident and resident individuals, trusts, and estates who are partners of the same partnership, shareholders of the same S corporation, or individuals transacting an insurance business in Illinois under a Lloyd's plan of operation. The eligibility of resident individuals, trusts, and estates is conditioned upon compliance with subsection (c) of this Regulation.

Example: The Acme partnership consists of a general partner and fifty (50) limited partners. The general partner is a regular corporation, and the limited partners consist of twenty-six (26) nonresident individuals, twenty (20) resident individuals, an S Corporation, a partnership, a nonresident trust, and an estate. The twenty-six (26) nonresident individuals, the nonresident trust, and the nonresident estate are automatically eligible to be included in a composite return. The twenty (20) resident individuals may be included in the composite return with the nonresidents if the Department grants their petition. None of the other entities may be included in the composite return.

Applying the provisions of the IITA and regulations discussed above to the facts here, COMPANY1 LLC may not file an Illinois composite return that includes COMPANY4, LLC and/or COMPANY5, LLC. Department of Revenue Regulations Section 100.5100(a) and (b) specifically limit the right to be included in a composite return to individuals, trusts and estates. Because neither COMPANY4, LLC nor COMPANY5, LLC is an individual, trust or estate, they may not be included in a composite return and must file separate Illinois income tax returns in accordance with IITA Section 502(a). It follows that composite estimated tax payments may not include the tax liabilities of COMPANY4, LLC or COMPANY5, LLC. Finally, composite estimated tax payments are not required to be made electronically under Department Regulations Section 750.300(a)(4)(D), nor may such payments be voluntarily made electronically under regulations section 750.500(e).

The regulations above referenced may be accessed from the Department's website.

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  
Associate Counsel (Income Tax)