

General Information Letter: Nexus issues are generally not appropriate for general information letters.

June 25, 2010

Dear:

This is in response to your letter dated May 14, 2010 in which you request a letter ruling. The following is in response to your request with respect to Illinois income tax. Your request with respect to sales and use tax has been referred to the Sales Tax Division and will be addressed by a separate ruling. The nature of your request and the information provided with respect to Illinois income tax requires 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 2 Ill. Adm. Code § 1200.120(b) and (c), which may be accessed from the Department's website at www.Iltax.com.

Your letter states as follows:

As a follow up to our request for a Voluntary Disclosure dated March 31, 2010 we have been advised by your department to contact you for a "nexus ruling" and prospective nexus settlement.

We have a client which is a company, based in STATE that would like a ruling/determination/settlement as to whether or not it has nexus in Illinois ("State"). The facts are as follows:

Our client began business shortly after January 2, 2009. Our client is a general contractor who typically performs light maintenance and repair services for businesses such as retail stores and shopping center. Customers will call our client for certain maintenance or repairs and our client will outsource or subcontract the work to in-state subcontractors or companies.

As the general rule (outside of STATE) our client did not charge the customer sales tax. However, the subcontractor charges our client sales tax on materials.

For example, a typical scenario is that a retail store will call our client to replace and change a light bulb. Our client will contact an in-state independent contractor. The contractor will charge our client the following:

Charge by in-state independent contractor to our client:

Parts and tax: \$8.00

Labor: \$72.00

Our client will then charge the customer the following:

Charge by our client to customer:

Parts: \$10

Labor: \$90

To date, the amount of in State work has not been a material portion of the client's revenue. They do not believe that their presence in the State has exceeded the "de minimis" threshold

to create nexus. As of March 31, 2010 our client was not registered, nor did the client collect any State tax or issued any State exemption documents.

However we are currently reviewing this position and would like to register, collect and remit tax as soon as reasonably possible.

Our client has had no prior contact with the State revenue authorities and is not currently under audit by the State.

Please provide us with a ruling on whether or not our client has nexus in your State.

We respectfully request, to be allowed to enter into an agreement where the client voluntarily comes forward and agrees to register, collect, pay and remit all applicable state sales and use taxes from the period from July 1, 2010 into perpetuity. In return, we are looking for the state to agree that no returns were due for the period January 2, 2009 through June 30, 2010.

RULING

The determination as to whether a taxpayer has nexus with Illinois is extremely fact-specific. Therefore, the Department does not issue rulings regarding whether a taxpayer has nexus with the State. For information regarding nexus, see Department of Revenue Regulations Section 100.9720 (accessible from the Department's web site). In addition, the following general information may be provided.

The United States Constitution restricts a state's power to subject to income tax foreign corporations and other nonresidents. The Due Process Clause requires that there exist some minimum connection between a state and the person, property, or transaction the state seeks to tax. (*Quill Corp. v. N. Dakota*, 504 U.S. 298 (1992)) Similarly, the Commerce Clause requires that a state's tax be applied only to activities with a substantial nexus to the taxing state. (*Id.*) In the case of foreign corporations, Illinois may assert nexus to tax unless the corporation falls under the protection provided under Public Law 86-272. (15 U.S.C. § 381) Public Law 86-272 precludes any state from subjecting a nondomiciliary corporation to a net income tax where such corporation's only activities within the state for the taxable year consist of solicitation activities for sales of tangible personal property. In general, a taxpayer has nexus with Illinois where its agents are physically present in the State providing services on behalf of the taxpayer.

Section 502(a) of the Illinois Income Tax Act ("IITA" ; 35 ILCS 5/502(a)) sets forth the requirements for filing Illinois income tax returns. That section states in pertinent part as follows:

(a) In general. A return with respect to the taxes imposed by this Act shall be made by every person for any taxable year:

(1) For which such person is liable for a tax imposed by this Act, or

(2) In the case of a resident or in the case of a corporation which is qualified to do business in this State, for which such person is required to make a federal income tax return, regardless of whether such person is liable for a tax imposed by this Act.

Under this section, a nonresident must file an Illinois income tax return if it incurs a liability for tax imposed under Section 201 of the IITA (or in the case of a corporation qualified to do business in Illinois, if it is required to file a federal return). A nonresident is liable for Illinois income tax under Section 201 if it computes "Illinois net income" as defined under IITA Section 202. IITA Section 202 defines Illinois net income as that portion of the taxpayer's "base income" as defined in Section 203, which is allocated or apportioned to Illinois under the provisions of Article 3 of the IITA, less certain deductions. The above provisions may be accessed from the Department's web site.

Section 3-10(c) of the Uniform Penalty and Interest Act ("the UPIA"; 35 ILCS 735/3-10(c)) limits the period of assessment in certain cases where a taxpayer voluntarily discloses its failure to file a tax return. The section states:

In the case of a failure to file a return required by law that is voluntarily disclosed to the Department, in accordance with regulations promulgated by the Department for receiving the voluntary disclosure, the tax may be assessed no more than 4 years after the original due date of each return required to have been disclosed.

The manner in which a taxpayer makes such disclosure is set forth at Regulations section 210.126 (86 Ill. Adm. Code 210.126), which may be accessed from the Department's web site at <http://www.revenue.state.il.us/LegalInformation/regs/part210/>.

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 wish to obtain a PLR which will bind the Department, please submit a request conforming to the requirements of 2 Ill. Adm. Code § 1200.110(b).

Sincerely,

Brian L. Stocker
Associate Counsel (Income Tax)