

General Information Letter: Nexus issues are not generally suitable for resolution by letter ruling.

August 5, 2010

Dear:

This is in response to your letter dated July 12, 2010 in which you request a letter ruling. The nature of your request and the information provided 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).

Your letter states as follows:

This letter serves as a request from COMPANY1, Inc. ("COMPANY1") that is interested in a nexus determination, and, if appropriate, disclosing unpaid corporate income tax under Illinois' Voluntary Disclosure Program. The facts relating to COMPANY1 are as follows.

In 2008, COMPANY1 was purchased by COMPANY2. COMPANY1 is a C-corporation that is incorporated in the state of STATE1. COMPANY1 has a calendar year-end. COMPANY1 provides the following administrative services to its customers: membership services, enrollment processing, claims adjudication, premium billing, health risk screening. In addition, COMPANY1 provides ancillary computer maintenance and set-up services in order to facilitate said administration.

Some of COMPANY1's customers have operations in Illinois and COMPANY1 provides the administrative services for those operations. COMPANY1 does not have any full-time employees in Illinois and performs the majority of the services for its customers in STATE2. However, COMPANY1 may use an affiliated entity's employees in Illinois to perform accounting or tax functions. COMPANY1 does not have any property (real or personal) in Illinois.

COMPANY1 had federal taxable income (loss) before NOL or special deductions, on a separate company basis, of (\$2,104,782) in 2004, (\$5,909,637) in 2005, \$7,083,629 in 2006, and \$14,099,399 in 2007.

## **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)