

IT 13-0003-PLR 09/18/2013 ALTERNATIVE APPORTIONMENT-PRIVATE LETTER RULING.

Taxpayer was terminated in a prior year is granted permission to apportion gain from liquidating sale of depreciable real property by using the average of the apportionment factors of years in which the property was used in the business.

September 18, 2013

Re: ABC COMPANY  
Request for Private Letter Ruling

Dear Xxxxx:

This is in response to your letter dated August 1, 2013 in which you request a Private Letter Ruling on behalf of ABC COMPANY and Subsidiaries (ABC COMPANY). Your request for a Private Letter Ruling includes the information required under paragraphs 1 through 8 of subsection (b) of 2 Ill. Adm. Code 1200.110. The Private Letter Ruling will bind the Department only with respect to ABC COMPANY for the issues presented in this ruling, and is subject to the provisions of subsection (e) of Section 1200.110 governing the expiration of Private Letter Rulings. Issuance of this ruling is conditioned upon the understanding that ABC COMPANY and/or any related taxpayer(s) is not currently under audit or involved in litigation concerning the issues that are the subject of this ruling request.

The facts and analysis as you have presented them are as follows:

We are writing this letter as a petition to employ an alternative method of apportionment other than the method as prescribed on form IL-1120. We are requesting under IITA Section 304(f) and administrative code 100.3390 "Petitions for Alternative Allocation or Apportionment." We believe that the application of the required statutory formula for apportionment will lead to a grossly distorted result. We would like to propose a fair and accurate alternative method.

Our company was in the business of manufacturing and renting industrial equipment as well as stamping automotive equipment. We operated three manufacturing plants in STATE1 and one retail/rental store in CITY1, Illinois. During the September 30, 2012 fiscal year we ceased operations as the majority of our assets were sold to an unrelated party. This was a forced sale by our bank. After this sale, our company only owned one building in Illinois and one building in STATE1 worth about \$550,000, yet we had about \$1,100,000 in debt.

Our only activity in fiscal year September 30, 2013 will be the sale of the Illinois building. Using the apportionment factor as prescribed by IL-1120, 100% of our income will be apportioned to Illinois as we no longer have any STATE1 sales. Historically our Illinois apportionment percentage has ranged from 3.1% to 11.9%.

Our income from the sale of this building will simply be depreciation recapture. We will not be selling it for more than our original basis. We believe reporting 100% of this depreciation recapture as Illinois income would not be representative of our true business activity in the

state considering only 3.1% to 11.9% of the original depreciation deduction was apportioned to Illinois.

We would like to propose two apportionment options for the year ended September 30, 2013.

- 1) We will use the average of the Illinois apportionment percentage over the last 9 years. (We were only able to readily obtain the prior nine years of tax returns.) In the prior nine years we had \$7,613,639 of Illinois sales and \$180,198,122 of sales everywhere. Therefore we propose apportioning 4.2251% of our income to the state of Illinois.
- 2) In the prior nine years, our highest percentage apportioned to Illinois was 11.9443%. Therefore we propose apportioning 11.9443% to the state of Illinois.

We believe that our first proposed option of apportionment would be the most accurate reflection of our business activity in the state of Illinois. However, we will accept the second option if the department feels it is a more accurate representation.

If we were forced to use the 100% Illinois apportionment, which does not accurately reflect our business activity, we would have no means to pay our tax liability. Our business has no cash and one building in STATE1 which we have been unable to sell for four years. The proceeds from the sale of our Illinois building went directly to our bank to pay down our outstanding line of credit. If we were able to sell our STATE1 building, all of the proceeds would go directly to the bank. The STATE1 building also has liens from our creditors in excess of its value.

We respectfully request that you consider our proposed method of apportionment.

## **RULING**

Under Section 304(h) of the Illinois Income Tax Act ("IITA" 35 ILCS 5/304(h)), for taxable years ending on and after December 31, 2000, the apportionment factor for taxpayers apportioning business income under Section 304(a) is equal to the sales factor. The sales factor is defined under Section 304(a)(3)(A) as follows:

The sales factor is a fraction, the numerator of which is the total sales of the person in this State during the taxable year, and the denominator of which is the total sales of the person everywhere during the taxable year.

The term "sales" is defined under IITA Section 1501(a)(21) to mean all gross receipts of the taxpayer not allocated under Sections 301, 302 and 303.

However, IITA Section 304(f) provides:

If the allocation and apportionment provisions of subsections (a) through (e) and of subsection (h) do not, for taxable years ending before December 31, 2008, fairly represent the extent of a person's business activity in this State, or, for taxable years ending on or after December 31, 2008, fairly represent the market for the person's goods, services, or other sources of business income, the person may petition for, or the Director may, without a petition, permit or require, in respect of all or any part of the person's business activity, if reasonable:

- (1) Separate accounting;
- (2) The exclusion of any one or more factors;
- (3) The inclusion of one or more additional factors which will fairly represent the person's business activities or market in this State; or

- (4) The employment of any other method to effectuate an equitable allocation and apportionment of the person's business income.

Pursuant to this section, the Department promulgated Regulations Section 100.3380, which states in relevant part:

The Director has determined that, in the instances described in this Section, the apportionment provisions provided in subsections (a) through (e) and (h) of IITA Section 304 do not fairly represent the extent of a person's business activity within Illinois.

...

Where gross receipts arise from an incidental or occasional sale of assets used in the regular course of the person's trade or business, such gross receipts shall be excluded from the sales factor. For example, gross receipts from the sale of a factory or plant will be excluded.

The purpose of this regulation is to exclude from the sales factor, sales that are not representative of the ordinary or typical manner in which a taxpayer generates gross income.

Your letter indicates that ABC COMPANY is in the business of manufacturing and renting industrial equipment as well as stamping automotive equipment. Prior to ceasing business operations in its 2012 taxable year, ABC COMPANY operated three manufacturing plants in STATE1 and a retail/rental store in Illinois. ABC COMPANY sold its Illinois retail/rental store during its 2013 taxable year. The sale of the Illinois retail/rental store constitutes an incidental or occasional sale of assets used in the regular course of business under Regulations Section 100.3380. Therefore, the gross receipts from such sale must be excluded from the ABC COMPANY's sales factor.

You have further indicated that ABC COMPANY only activity during its 2013 taxable year will be the sale of the Illinois retail/rental store. Because the gross receipts from that sale must be excluded from the sales factor, ABC COMPANY will not have any sales to be included in its sales factor, and consequently no apportionment factor. In such a case, it is clear that the allocation and apportionment provisions of subsections (a) through (e) and of subsection (h) of Section 304 do not fairly represent the market for the ABC COMPANY's goods, services, or other sources of business income. Therefore, an alternative apportionment method is appropriate.

Your letter proposes an alternative apportionment method for the 2013 taxable year in which ABC COMPANY would use its average Illinois apportionment percentage over its previous nine taxable years. You have indicated that although the Illinois building was used in the business for more than nine taxable years, nine taxable years represents the extent of your retained business records. Accordingly, you may compute ABC COMPANY's apportionment factor for its 2013 taxable year as equal to ABC COMPANY's total Illinois sales for the previous 9 taxable years specified in your letter over its total everywhere sales for the previous 9 taxable years specified in your letter.

Finally, it appears likely that a similar issue will arise upon your eventual sale of the remaining STATE1 plant. Gross receipts from the sale of the STATE1 plant will likewise be excluded from ABC COMPANY's Illinois sales factor. And since ABC COMPANY has ceased business operations, no other sales will contribute to its sales factor. Therefore, you should use the same alternative apportionment methodology approved here to apportion to Illinois the gain or loss from the sale of the STATE1 plant.

The petition of ABC COMPANY under Section 304(f) of the IITA to use the alternative apportionment formula described in this ruling is hereby granted, and ABC COMPANY may use that apportionment

formula for Illinois income tax returns due (including extensions) on or after November 29, 2013, which is 120 days after August 1, 2013, the date the petition was filed. This grant does not apply to prior taxable years. Please attach a copy of this ruling to returns filed.

The factual representations upon which this ruling is based are subject to review by the Department during the course of any audit, investigation, or hearing and this ruling shall bind the Department only if the factual representations recited in this ruling are correct and complete. 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.

Sincerely,

Brian L. Stocker  
Chairman, PLR Committee (Income Tax)