

Petition to use separate accounting cannot be granted merely because separate accounting reaches a different tax liability than the statutory apportionment method.

September 15, 2015

Re: YYYYY, LLC
Petition for Alternative Apportionment

Dear Ms. XXXX:

This is in response to your letter dated September 1, 2015, in which you request permission to use separate accounting to allocate income to Illinois, rather than the statutorily-mandated apportionment formula, pursuant to Section 304(f) of the Illinois Income Tax Act (the "IITA"; 35 ILCS 101 *et seq.*). The nature of your letter 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.revenue.state.il.us. For the reasons discussed below, your petition cannot be granted at this time.

In your letter you have stated the following:

We have been asked to request permission to use an alternative apportionment formula for Form IL-1065 for the tax year ended December 31, 2014. Using the prescribed sales apportionment factor produces a grossly distorted result that is not indicative of the actual Illinois activity for the year. The taxpayer requests permission to use a specific allocation method in order to properly allocate Illinois activity to the partners.

Response

Section 304(f) of the IITA 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 in this State; or
- 4) The employment of any other method to effectuate an equitable allocation and apportionment of the person's business income.

Taxpayers who wish to use an alternative method of apportionment under this provision are required to file a petition complying with the requirements of 86 Ill. Adm. Code Section 100.3390, which may be found on the Department's web site at [www. tax.illinois.gov](http://www.tax.illinois.gov). Subsection (c) of that regulation provides:

A departure from the required apportionment method is allowed only where such methods do not accurately and fairly reflect business activity in Illinois. An alternative apportionment method may not be invoked, either by the Director or by a taxpayer, merely because it reaches a different apportionment percentage than the required statutory formula. However, if the application of the statutory formula will lead to a grossly distorted result in a particular case, a fair and accurate alternative method is appropriate. The party (the Director or the taxpayer) seeking to utilize an alternative apportionment method has the burden of going forward with the evidence and proving by clear and cogent evidence that the statutory formula results in the taxation of extraterritorial values and operates unreasonably and arbitrarily in attributing to Illinois a percentage of income which is out of all proportion to the business transacted in this State. In addition, the party seeking to use an alternative apportionment formula must go forward with the evidence and prove that the proposed alternative apportionment method fairly and accurately apportions income to Illinois based upon business activity in this State.

Because your request merely states that separate accounting for the taxpayer's Illinois income more accurately reflects its Illinois activity, this petition does not meet this regulatory requirement and cannot be granted at this time.

Also, please note that 86 Ill. Adm. Code Section 100.3390(e)(1) requires a petition to be filed at least 120 days prior to the due date (including extensions) for the first return for which permission is sought to use the alternative apportionment method. Your petition was filed September 1, 2015, and will allow the taxpayer to use the requested method on original returns due on or after December 30, 2015, if ultimately granted. Under 86 Ill. Adm. Code Section 100.5030(b), partnerships are granted an automatic six-month extension of time to file their

Illinois income tax returns, which are otherwise due on the fifteenth day of the fourth month after the end of the taxable year. Accordingly, the return for a partnership for its taxable year ending December 31, 2014, is October 15, 2015, and your petition was not timely for that taxable year.

Because you did not file a timely petition for permission to use separate accounting on the 2014 return, 86 Ill. Adm. Code Section 100.3390(e)(2) requires you to file the 2014 return using the statutory apportionment method and to petition to use separate accounting by filing an amended return using the desired separate accounting method and including with the amended return a petition to use that method.

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 still believe that your petition should be granted, please supplement the petition in accordance with the provisions of 86 Ill. Adm. Code Section 100.3390. If you have any questions, you may contact me at (217) 524-3951.

Sincerely,

Paul S. Caselton
Deputy General Counsel – Income Tax