

IT 16-0007-GIL 12/05/2016 RETURNS

A nonresident partner whose liability for income and replacement tax is fully satisfied by amounts withheld on its behalf under IITA Section 502(a)(1). (This is a GIL.)

December 5, 2016

Re: Illinois income tax

Dear Xxxxx:

This is in response to your letter dated October 31, 2016. The nature of your request and the information you have 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 86 Ill. Adm. Code 1200.120(b) and (c), which may be accessed from the Department's web site at www.tax.illinois.gov.

In your letter you have stated the following:

We are writing to the Illinois Department of Revenue to obtain a legal opinion as to the Illinois filing requirement for the above mentioned corporation.

The taxpayer is a member in COMPANY (COMPANY). COMPANY is a STATE limited liability company residing in the state of STATE 1. COMPANY 1 (COMPANY 1) is a member in COMPANY and also resides in the state of STATE 1; therefore, COMPANY 1 is a non-resident member for Illinois purposes. COMPANY remits the pass-through withholding payments on behalf of COMPANY 1. COMPANY 1's sole revenue source is the pass-through income from COMPANY and, otherwise, has no other Illinois sources of revenue.

The question we would like for the Legal Department to address is the following:

Since 100% of Illinois revenue is generated at the partnership level and COMPANY makes timely quarterly tax estimates, is COMPANY 1 required to file annually Form IL-1120, Corporation Income and Replacement Tax Return?

RULING

Section 502(a) of the Illinois Income Tax Act ("IITA" ; 35 ILCS 5/101 *et seq.*) 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.

Notwithstanding the provisions of paragraph (1), a nonresident (other than, for taxable years ending on or after December 31, 2011, a nonresident required to withhold tax under Section 709.5) whose Illinois income tax liability under subsections (a), (b), (c), and (d) of Section 201 of this Act is paid in full after taking into account the credits allowed under subsection (f) of this Section or allowed under Section 709.5 of this Act shall not be required to file a return under this subsection (a).

IITA Section 709.5(a) imposes an income tax withholding requirement on partnerships, S corporations, and trusts, with respect to the shares of business income, and certain nonbusiness income, of nonresident partners, shareholders, or beneficiaries. IITA Section 709.5(b) provides for the treatment of amounts so withheld with respect to the partner, shareholder, or beneficiary:

Credit for taxes withheld. Any amount withheld under subsection (a) of this Section and paid to the Department shall be treated as a payment of the estimated tax liability or of the liability for withholding under this Section of the partner, shareholder, or beneficiary to whom the income is distributable for the taxable year in which that person incurred a liability under this Act with respect to that income.

Applying these provisions to the facts represented in your letter, COMPANY 1. is not required to file an Illinois income tax return unless it is qualified to do business in Illinois and required to make a federal income tax return.

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 further questions regarding this GIL, please call (217) 782-2844. If you have additional questions regarding Illinois income tax laws, please visit the Department's web site at www.tax.illinois.gov.

Sincerely,

Brian L. Stocker
(Associate Counsel – Income tax)