

Apportionment of Separate Businesses under Regulation 100.3010(b) Does Not Require Petition for Alternative Apportionment. (This is a GIL)

May 2, 2017

Re: Petition for Alternative Apportionment

Dear Xxxxx:

This is in response to your letter dated February 7, 2017 in which you request permission to use an alternative method of allocation or apportionment. Department of Revenue ("Department") regulations require that the Department issue only two types of letter rulings, Private Letter Rulings ("PLRs") and General Information Letters ("GILs"). PLRs are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding against the Department, but only as to the taxpayer issued the ruling and only to the extent the facts recited in the PLR are correct and complete. GILs do not constitute statements of Department policy that apply, interpret or prescribe the tax laws and are not binding against the Department. See 2 Ill. Adm. Code 100.1200(b) and (c). For the reasons discussed below, your petition cannot be granted at this time.

Your letter states as follows:

The above referenced taxpayer received a notice for the 20XX tax year regarding Business income Apportioned to Illinois. Per my discussions with the Illinois Department of Revenue and in researching the Illinois Tax Regulations, we are writing this letter as a Petition for Alternative Allocation or Apportionment under Sec. 100.3390, IITA Sec. 304(f), for 2016 going forward. We would also like to request the same method for the tax year 20XX. A power of attorney is enclosed authorizing me to act on behalf of the LLC.

COMPANY has three separate business activities involving rental real estate. COMPANY 1 owns vacant land and buildings in Chicago, IL. All activity has been capitalized as the property is vacant, therefore there was no income or loss reported for this activity in 20XX.

COMPANY 1 is the sole member of COMPANY 2. COMPANY 2 owns commercial rental property in CITY 1, IL

COMPANY 1 is also the sole member of COMPANY 3. COMPANY 3 owns a commercial rental property in CITY 2, STATE.

Allocating the combined income of these entities by gross revenue does not fairly represent the business activities in the state of Illinois. These rental properties are operated completely separately. They are managed separately with all income and expenses kept through accounting records for each of the rental properties. A complete set of books is maintained for each property. They each have separate bank accounts. The land, building and other fixed assets of the CITY 1, IL property are owned by COMPANY 4. The CITY 3, IL property is owned by COMPANY 1. The tenant leases are signed and negotiated with the three LLC's, however, the CITY 3. IL property is currently vacant.

Enclosed are copies of the balance sheets and income statements for the three LLC's. On the federal tax return filed; each of the rental properties income and expense activities are reported separately on form 8825, including separate depreciation schedules for each. A copy of the federal return filed for 20XX is enclosed. The balance sheets of the three separate LLC's

are then combined for reporting on the federal return. They are maintained separately, just combined for reporting on the federal tax return balance sheet.

COMPANY 1, COMPANY 3 and COMPANY 4 all have separate operating agreements and federal identification numbers. Copies of the operating agreements are attached. The intention has always been to keep the businesses separate.

These three rental properties are operated as separate businesses with all income and expenses maintained by property. The rental income from the property in CITY 2, STATE (COMPANY 4) is from rental activities in the state of STATE.

In 20XX, we reported on the IL 1065 the net loss from COMPANY 3 (located in CITY 1, IL) in the amount of \$\$\$\$. Attached please find copies of the income statement as well as the balance sheet for this property. COMPANY 4 (located in CITY 2, STATE) had net income of \$\$\$ in 20XX. The net income of COMPANY 1 (combining all three properties) was \$\$\$ in 20XX. On the 20XX IL-1065 we reported a loss of \$\$\$ on line 46, base income or loss allocable to Illinois. We allocated the income in Illinois and STATE using a separate accounting allocation, which is an allowable method under Sec. 100.3380 and Sec. 100.3390.

We are requesting that the separate accounting method be used in the tax year 20XX and going forward as this method most clearly represents the activities in each state. We would like to request that this method be allowed for the 20XX tax return filed. Allocating based on gross income does not reflect the actual income earned in each state.

RULING

Section 304(f) of the Illinois Income Tax Act ("IITA" 35 ILCS 5/304(f)) states:

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.

IITA Section 304(a) provides that when a nonresident derives business income from Illinois and one or more other states, such income shall be apportioned to Illinois by multiplying the income by the taxpayer's apportionment factor. For taxable years ending on and after December 31, 1998, except in the case of an insurance company, financial organization, transportation company, or federally regulated exchange, the apportionment factor is equal to the sales factor. IITA Section 304(a)(3) defines the sales factor as a fraction, the numerator of which is the total sales of the person in Illinois during the taxable year, and the denominator of which is the total sales of the person everywhere during the taxable year.

In applying Section 304(a), Department Regulations Section 100.3010(b)(1) provides that when a taxpayer conducts two or more separate businesses, the business income of each such business must be separately apportioned. Section 100.3010(b)(1) states:

A person may have more than one “trade or business.” In such cases, it is necessary to determine the business income attributable to each separate trade or business. In the case of a person other than a resident, the income of each business is then apportioned by a formula that takes into consideration the instate and outstate factors relating to the trade or business the income of which is being apportioned.

Example: The person is a corporation with three operating divisions. One division is engaged in manufacturing aerospace items for the federal government. Another division is engaged in growing tobacco products. The third division produces and distributes motion pictures for theaters and television. Each division operates independently; there is no strong central management. Each division operates in this State as well as in other states. In this case, it is fair to conclude that the corporation is engaged in three separate “trades or businesses.” Accordingly, the amount of business income attributable to the corporation’s trade or business activities in this State is determined by applying an apportionment formula to the business income of each business.

Department Regulations Section 100.3010(b)(3) provides rules for determining whether activities constitute a single trade or business or more than one separate trade or business. This determination is made based on the particular facts of each case.

Your petition for alternative apportionment is based on the position that the rental properties constitute separate trades or businesses. Assuming that position is correct, Department Regulations Section 100.3010(b)(1) provides for the business income of each such trade or business to be apportioned separately. It is not necessary to file a petition for alternative apportionment in order to apply the provisions of Section 100.3010(b)(1).

This letter does not constitute a determination that the separate properties described in your letter in fact constitute separate businesses. You must make that determination applying the rules set forth in Regulations Section 100.3010(b)(3). If applying those rules you determine that the three properties constitute a single unitary business, then the income from each property must be combined and apportioned applying Section 304(a) to the activities as a single business. In order to obtain an alternative apportionment, you must satisfy the burden of proof set forth in Department Regulations Section 100.3390(c). Please note that Regulations 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.

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.

Sincerely,

Brian Stocker
Associate Counsel (Income Tax)