

Department Does Not Issue Rulings regarding Nexus

June 6, 2017

Re: Illinois income tax

Dear Xxxxx:

This is in response to your letter dated March 21, 2017 in which you request guidance regarding the application of Illinois corporate income tax. 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 who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. A PLR will not be issued for an anonymous or unidentified taxpayer. 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). The nature of your request and the information provided requires that we respond with a GIL.

Your letter states as follows:

This is to request guidance, on behalf of a client, regarding whether or not the following activities create nexus for Illinois sales tax and/or corporate income tax in prior years. We are currently discussing with this client the possibility of requesting a voluntary disclosure agreement with Illinois.

The client had a resident employee in the state from December 21, 2012 until July 31, 2015.

The client has used independent contractors located in the state to perform services from August 1, 2010 and going forward. The sole role of the independent contractors is medical transcription which is performed from home using their own equipment and setting their own hours and/or volumes for work. Transcription services are performed for customers in various states, including Illinois. These independent contractors do not solicit sales nor market and advertise the client's products and services in any way to customers in the state.

The client may occasionally have employees onsite at customer locations in the state to be part of the sales process and/or for implementation and training.

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 website). 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.*) Department Regulations Section 100.9720(e) states:

U.S. Constitutional Jurisprudence. If not protected by U.S. or Illinois statute, an income-producing activity may, nonetheless, be protected from State taxation by principles of U.S. Constitutional jurisprudence. Controlling decisions that assert protections afforded by the Interstate Commerce Clause, the Foreign Commerce Clause and the Due Process Clause are accepted by this State as limitations on the reach of its income tax and personal property tax replacement income tax statutes. However, nothing stated in this subsection (e) shall prevent Illinois from challenging taxpayer assertions of U.S. Constitutional protection.

Generally, the physical presence within a state of a taxpayer's employees or other representatives will establish the requisite connection or substantial nexus with the state necessary to subject the taxpayer to the state's corporate income tax. See, for example, *Standard Pressed Steel v. Washington*, 95 S.Ct. 706 (1975); *Scripto, Inc. v. Carson*, 80 S.Ct. 619 (1960); and *Tyler Pipe Industries, Inc. v. Washington*, 107 S.Ct. 2810 (1987).

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 L. Stocker
Associate Counsel (Income Tax)