

IRAs with unrelated business taxable income are subject to the requirements of Section 205 of the Illinois Income Tax Act. (This is a GIL.)

July 9, 2019

Re: Illinois Income Tax

Dear Xxxx:

This is in response to your letter dated May 15, 2019, in which you request information regarding Illinois income tax. The nature of your request 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.tax.illinois.gov](http://www.tax.illinois.gov).

Your letter states as follows:

Our question concerns income received by an IRA and its taxable status. We represent a client with an IRA that is required to file and pay the Federal 990-T each year. The source income for the growth of this IRA is from a Subchapter S corporation. We know Subchapter S corporation income is considered pass through income and therefore subject to Illinois tax. However, since Illinois does not tax IRAs or retirement income, does the IRA need to file/pay the unrelated business income on the Illinois 990-T?

We have contacted the Illinois Department of Revenue tax compliance previously and were unable to obtain a definitive answer to our questions. Rather, we were referred to your office for clarification. Thank you for your time and consideration. Further correspondence is requested to resolve this matter. If there is anything we can clarify so you can accurately state Illinois' position in this matter, please contact me at your earliest.

## **RULING**

Section 205(a) of the Illinois Income Tax Act ("IITA"), 35 ILCS 5/205(a), provides:

- (a) Charitable, etc. organizations. The base income of an organization which is exempt from the federal income tax by reason of the Internal Revenue Code shall not be determined under section 203 of this Act, but shall be its unrelated business taxable income as determined under section 512 of the Internal Revenue Code, without any deduction for the tax imposed by this Act. The standard exemption provided by section 204 of this Act shall not be allowed in determining the net income of an organization to which this subsection applies.

Internal Revenue Code ("IRC") Section 408(a), 26 U.S.C. § 408(a), states that an "individual retirement account" ("IRA") means "a trust created or organized in the United States for the exclusive benefit of an individual or his beneficiaries, but only if the written governing instrument creating the trust" meets certain requirements. According to IRC Section 408(e)(1), 26 U.S.C. § 408(e)(1), an IRA is "exempt from taxation[...]unless such account has ceased to be an individual retirement account[...]" Notwithstanding the preceding sentence, any such account is subject to the taxes imposed

by section 511 (relating to imposition of tax on unrelated business income of charitable, etc. organizations).” IRC Section 511, 26 U.S.C. § 511, imposes a tax on unrelated business income of charitable, etc., organizations, including IRAs. IRC Section 512, 26 U.S.C. § 512, generally defines “unrelated business taxable income” as “the gross income derived by any organization from any unrelated trade or business regularly carried on by it, less the deductions allowed...which are directly connected with the carrying on of such trade or business, both computed with the modifications provided in [26 U.S.C. § 512(b)].”

According to your request, you represent a client “[...] with an IRA that is required to file and pay the Federal 990-T each year.” As described in your request, the IRA would be a charitable, etc. organization that is subject to the tax imposed on unrelated business income by IRC Section 511 as determined under IRC Section 512. Therefore, the IRA’s base income shall be calculated under Section 205(a) of the IITA which requires that its base income shall be its unrelated business taxable income as determined under IRC Section 512.

Whether or not your client’s IRA is required to “file/pay the unrelated business income on the Illinois 990-T,” cannot be determined based on the general information that you provided in your request. Generally, you must file Form IL-990-T if you are an organization exempt from federal income tax under Section 501(a) of the Internal Revenue Code (IRC) with unrelated business taxable income under IRC Section 512, and either have net income as defined under the Illinois Income Tax Act (IITA); or are a resident or qualified to do business in the state of Illinois and are required to file U.S. Form 990-T (regardless of net income or loss). For further information on determining the IRA’s potential unrelated business taxable income liability, please refer to Form IL-990-T and the IL-990-T Instructions, both of which may be found at the Department’s website: [www.tax.illinois.gov](http://www.tax.illinois.gov).

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 are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b). If you have any further questions regarding this letter, you may contact me at (217) 782-2844.

Sincerely,

Michael D. Mankowski  
Associate Counsel (Income Tax)