

Apportionment of separate businesses under 86 Ill. Adm. Code Section 100.3010(b) does not require petition for alternative apportionment. (This is a GIL.)

March 26, 2025

NAME  
COMPANY1  
ADDRESS  
EMAIL

Re: Petition for Alternative Apportionment  
COMPANY2  
FEIN: #####  
Tax Year Ended: YEAR

Dear NAME1:

This is in response to your February 22, 2025, petition on behalf of COMPANY2 to use an alternative method of allocation or apportionment effective for tax year ending YEAR and subsequent tax years. 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 2 Ill. Adm. Code Section 1200.120(b) and (c), which may be found on the Department's website at <https://tax.illinois.gov/>. For the reasons discussed below, your petition cannot be granted.

Your petition for the YEAR tax year ended states as follows:

We are the accountants of the above-named taxpayer and would like to request an alternative methodology of reporting Illinois income since the standard apportionment method does not fairly and accurately reflect the taxpayer's income generated from Illinois.

The taxpayer is a STATE S corporation, whose sole business operation and place of business is in CITY1, STATE. The only activity in the State of Illinois is having an interest in a CITY2 Hotel (COMPANY3 with EIN: #####).

None of the other investments or activities of the taxpayer have any connection to Illinois.

COMPANY2's only presence and source of income in Illinois is as a result of its partnership interest %%% in COMPANY3. Consequently, it has been determined that the accurate measure of income sourced

to Illinois each year is to allocate 100% of the profits and losses reported on the K-1s of this partnership.

The taxpayer had applied the alternative allocation of income method for its prior years amended returns from years YEARS. And the revenue agent of your department, NAME2 had accepted and approved for using this alternative allocation method of reporting Illinois income for those years. In addition, taxpayer is consistent in using the same methodology of reporting its year YEARS Illinois income.

We respectfully request the approval of using alternative allocation method of reporting Illinois income from year YEAR and onwards for the taxpayer. Kindly advise of your decision.

### **RULING**

Section 304(a) of the Illinois Income Tax Act ("IITA" 35 ILCS 5/304) 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.

IITA Section 304(f) 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 to 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.

Taxpayers who wish to use an alternative method of apportionment under IITA Section 304(f) are required to file a petition complying with the requirements of 86 Ill. Adm. Code Section 100.3390. 86 Ill. Adm. Code Section 100.3390(c) 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.

In applying IITA Section 304(a), 86 Ill. Adm. Code Sections 100.3010(b)(1) and (2) provide that when a taxpayer conducts two or more separate businesses, the business income of each such business must be separately apportioned:

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.

Your petition does not address the issue of whether or not the business of COMPANY2 and the business of COMPANY3 actually constitute a single unitary business. If your petition for alternative apportionment is based on the position that the taxpayer’s corporate operations in STATE and its interest in a CITY2 hotel constitute separate trades or businesses, then 86 Ill. Adm. Code 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 86 Ill. Adm. Code Section 100.3010(b)(1). (See also IT 17-0006-GIL.) This will likely produce either the result you are seeking in your petition or a result that you will not consider to be grossly distorted.

This letter does not constitute a determination that the separate properties described in your petition in fact constitute separate businesses. You must make that determination applying the rules set forth in 86 Ill. Adm. Code Section 100.3010(b)(3). If in applying those rules you determine that the operations constitute a single unitary business, then the income from each property must be combined and apportioned applying IITA Section 304(a) to the activities as a single business. In order to obtain an alternative apportionment ruling, you must satisfy the burden of proof set forth in 86 Ill. Adm. Code Section 100.3390(c).

Alternatively, if the businesses are unitary, you have not presented evidence sufficient to allow the Department to grant your request. In order to make a determination under IITA Section 304(f) as to whether or not the apportionment provisions of subsections (a) through (e) and of subsection (h) reflect the market for the person’s goods, services, or other sources of business income, it is necessary that the taxpayer first determine its apportionment under such sections. If the apportionment under such sections does not fairly reflect the taxpayer’s market, then an alternative apportionment method may be permitted. Your petition contains no information relative to the market for the taxpayer’s goods or services, nor does it contain information by which a determination can be made as to whether the apportionment resulting under IITA Section 304 fails to fairly reflect that market. Your request contains no evidence that the statutory apportionment formula does not fairly represent the extent of the taxpayer’s business activities in Illinois or that the proposed alternative method of separate accounting does produce a reasonable

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result. The facts stated in your petition are not sufficient to satisfy the burden set forth in 86 Ill. Adm. Code Section 100.3390(c). Because your request merely states that separate accounting for the taxpayer's Illinois income more accurately reflects its Illinois activity, your petition for alternative apportionment does not meet the regulatory requirement and cannot be granted at this time.

Accordingly, your petition for alternative apportionment for tax year ended YEAR cannot be granted. However, if you have additional information related to this request that was not previously submitted, you may supplement your petition and the Department will reconsider your request.

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. In addition, each Private Letter Ruling request submitted to the Department for consideration must include certain information outlined in 2 Ill. Adm. Code Section 1200.110.

As stated above, this is a General Information Letter. A General Information Letter does not constitute a statement of policy that applies, interprets or prescribes the tax laws, and it is not binding on the Department.

Sincerely,

Jennifer Uhles  
Associate Counsel

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