

IT 26-0002-GIL 03/30/2026 ALTERNATIVE APPORTIONMENT

Petition to include property and payroll apportionment factors in sales factor calculation cannot be granted merely because the alternative method reaches a different apportionment percentage than the required statutory formula. (This is a GIL.)

March 30, 2026

NAME

COMPANY1

ADDRESS

EMAIL

Re: Petition for Alternative Apportionment
 COMPANY2
 FEIN: NUMBER
 Tax Years Ended: YEAR1, YEAR2, YEAR3

Dear NAME:

This is in response to your November 13, 2025, petition on behalf of COMPANY2, to use an alternative method of allocation or apportionment effective for tax years ending YEAR1, YEAR2, and YEAR3. The Department issues two types of letter rulings. Private Letter Rulings (“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 on 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. Persons seeking PLRs must comply with the procedures for PLRs found in the Department’s regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter (“GIL”) is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at <https://tax.illinois.gov/> to review regulations, letter rulings, and other types of information relevant to your inquiry.

The nature of your request and the information you have provided require that we respond with a GIL. For the reasons discussed below, your petition cannot be granted based on the information provided.

Your petition for tax years ending YEAR1, YEAR2, and YEAR3 states as follows:

INQUIRY:

On behalf of our client, COMPANY2, we hereby petition for use of an alternative method for apportioning COMPANY2's unitary business income for the tax years ending YEAR1; YEAR2; and YEAR3.

As this petition will explain, COMPANY2 has two unitary affiliates which manufacture industrial products in Illinois and distribute them to customers in other states, including states in which neither affiliate is itself subject to tax. Under the statutory formula, gross receipts from sales to customers, originating in Illinois, in the states where these affiliates are not taxable are "thrown back" to Illinois and counted in the sales factor numerator of the respective sellers.

As this petition will also explain, applying the statutory "throwback" rule to the gross receipts from these sales yields a grossly distorted result in at least two, related respects: First, by taxing unitary group profits that are in no sense attributable to transaction in Illinois. And second, by attributing to Illinois a percentage of COMPANY2's combined income that is out of all proportion to the market for the unitary group's products in the state.

To remedy this distortion, COMPANY2 therefore petitions for use of either one of the following alternative methods: (i) inclusion of equally weighted property, payroll, and sales factors with throwback; or (ii) a single sales factor without throwback. (See Exhibit 1).

BACKGROUND FACTS

COMPANY2's Manufacturing and Distribution Business

COMPANY2 and its unitary affiliates manufacture and distribute a wide variety of industrial products to diverse customers in the aerospace and defense, oil and gas, medical imaging, and pharmaceutical sectors, among others. During the years at issue, COMPANY2 and its unitary affiliates distributed these products to customers nationwide, including to customers in Illinois.

Two unitary affiliates have manufacturing operations in Illinois: COMPANY3, which makes products for use by defense contractors, and COMPANY4, which makes electronic test and measurement equipment for customers in different industries. During the years at issue, both companies shipped products from facilities in Illinois to customers in states where neither seller was subject to tax.

COMPANY2's Apportionment Factor

Illinois's standard apportionment factor including throwback sales and no property and payroll factor is PERCENT; PERCENT; and PERCENT, respectively for tax years ending YEAR1; YEAR2; and YEAR3. (See Exhibits 1, 3-5).

PETITION FOR ALTERNATIVE APPORTIONMENT

Section 304(f) of the Illinois Income Tax Act allows taxpayers to petition for use of an alternative apportionment method under certain circumstances. 35 ILCS 5/304(f). Specifically, the statute provides that for taxable years ending on or after December 31, 2008, a person may request permission to use an alternative method when the standard method does not fairly represent the market in Illinois for the person's goods or other sources of income. *Id.*

A person requesting an alternative apportionment has the burden of proof. To satisfy this burden, the person making the request must show that the regular method results in taxation of extraterritorial values, or that it arbitrarily attributes to Illinois a percentage of income that is out of all proportion to the market for the person's goods in the state. *Lakehead Pipe Line Co., Inc. v. Dep't of Revenue*, 192 Ill.App.3d 756, 762-63 (1st Dist. 1989); 86 Ill. Admin. Code § 100.3390(c).

This standard derives from the U.S. Supreme Court's opinion in *Hans' Rees Sons Inc. v. North Carolina ex rel. Maxwell*, 283 U.S. 123 (1931). In that case, the Court considered whether as applied, North Carolina's single-factor property formula was unconstitutional when the formula apportioned 80% of the taxpayer's unitary income to North Carolina, when on average, only 17% of that income was from operations actually conducted in the state (or 4.7% of actual value).

The taxpayer was a New York corporation engaged in tanning and manufacturing leather in North Carolina. The facts showed that 17% of the taxpayer's income was attributable to its tanning and manufacturing in North Carolina, with the rest attributable to its buying and selling activities conducted elsewhere. Under North Carolina's single-factor property formula, approximately 80% of the taxpayer's income was apportioned to the state.

The Court explained that a state may not apply a formula, even though fair on its face, when the formula apportions to the state “profits which are in no just sense attributable to transactions within its jurisdiction.” *Id.* at 134. The Court further explained that it need not determine “the precise part” of the unitary income which should be attributable to the local tanning and manufacturing, since the formula arbitrarily attributed to North Carolina a percentage of the taxpayer’s income “out of all appropriate proportion” to the business transacted in the state. *Id.* at 135.

The Statutory Formula Yields a Grossly Distorted Result

As applied to COMPANY2, the single-factor sales formula under Section 304(a) produces the same sort of result, only worse: it apportions on average some PERCENT of its unitary profits to Illinois, when only PERCENT-PERCENT (depending on the year) of those profits were from sales activities actually conducted in the state (or PERCENT-PERCENT of actual value). This highly distortive result is borne out by a third-party economic analysis of the operating margins of COMPANY3 and COMPANY4’s distribution activities¹.

This analysis examined the operating margins of eleven unrelated distributors, chosen for their functional similarities to the distribution (sales) activities of COMPANY3 and COMPANY4. The analysis shows that the three-year average operating margin for the unrelated distributors was PERCENT, while COMPANY3 and COMPANY4’s operating margins for the same period were much higher – PERCENT and PERCENT respectively.

This economic analysis demonstrates what is fairly attributable to a distributor, a sales only type functioning business, which in this case would be PERCENT revenues. As such, the distortive difference between the comparables’ operating margins and COMPANY3/COMPANY4 is attributable to other than distribution (sales) activities such as capital and labor employed (property and payroll factors).

COMPANY2’s business includes not just distribution (sales) activities but also manufacturing activities. COMPANY2’s operating margin of the unitary group is therefore dependent on additional factors besides sales, such as property and payroll components. See Exhibit 2.

The Proposed Methods Fairly and Accurately Apportion Income to Illinois

¹ The analysis focused on margins from *distribution* because the sales factor measures results from distribution activities (See Exhibit 2).

The first method – equally weighted payroll, property, and sales factors (with sales throwback) – fairly and accurately apportions income to Illinois based on COMPANY2’s sources of business income in the state. The data shows that PERCENT of COMPANY2’s unitary income is attributable to sales activities, meaning that the substantial majority of its apportionable income is from other, *non-sales* sources – namely, the manufacturing and related activities performed by the COMPANY2 workforce.

COMPANY2 should be allowed to apportion its business income using an equally weighted, payroll, property, and sales (with throwback) formula because such a formula more accurately reflects how COMPANY2’s apportionable income is actually generated, that is, through the combination of its payroll, property, and sales. (See Exhibit 4). Indeed, this is precisely why the three-factor formula has received the constitutional seal of approval from the United States Supreme Court.

In *Container Corp. of Am. v. Franchise Tax Bd.*, 463 U.S. 159 (1983), the Court remarked that the three-factor, payroll, property, and sales formula is the “benchmark” against which other apportionment formulas are judged. *Id.* at 170. This is so, the Court explained, because in combination, these factors reflect a reasonable sense of how income is commonly generated. *Id.* at 180-181. “The factor or factors used in the apportionment formula must actually reflect a reasonable sense of how income is generated.” *Id.* At 169. And presumably for this reason, this very method was for more than three decades the standard in Illinois.

The first proposed method fairly and accurately apportions credit for COMPANY2’s unitary income based on the factors most directly responsible for the income’s production – that is, its labor, its capital, and its sales. COMPANY2 should be allowed to use the method accordingly.

In addition, the other method – single sales factor, ***without throwback*** – would produce an equally fair and accurate apportionment, based on the actual market for COMPANY2’s goods in Illinois. Indeed, the original justification for the sales factor was that the factor reflects the contributions to the production of income made by the *market state*. See W. Pierce, *The Uniform Division of Income for Tax Purposes Act* (1957), 35 Taxes 747.

Although the throwback rule may help achieve one policy objective, *i.e.*, ensuring that 100% of income is taxed, it sacrifices another, *i.e.*, taxing only

income earned in Illinois, through the fiction that Illinois is the market for goods in fact delivered to purchasers in other states. Illinois accounts for PERCENT-PERCENT and PERCENT-PERCENT (depending on the year), respectively, of the total market for COMPANY3 and COMPANY4's products.

The second proposed method fairly, and much more accurately apportions COMPANY2's unitary income to Illinois based on the state's share of *the actual* market for its goods. If the Department does not approve the first method, COMPANY2 should be allowed to use this method instead (See Exhibit 5).

This petition along with copies of the exhibits, including amended returns, are being filed with both the Legal Services Bureau/Income Tax and amended return mailing addresses.

We look forward to the Department's response. We also respectfully request a meeting with the Department to discuss this request. If you have any questions or comments regarding this petition, feel free to call me at PHONE, or send me an email at EMAIL. (A power of attorney authorizing me to submit this petition is enclosed.)

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.

Section 304(f) of the IITA 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 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.

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 100.3380(a)(2) provides:

The Director has determined that, in the instances described in this Section, the apportionment provisions provided in IITA Section 304(a) through (e) and (h) do not fairly represent the extent of a person's business activity or market within Illinois. For tax years beginning on or after the effective date of a rulemaking amending this Section to prescribe a specific method of apportioning business income, all nonresident taxpayers shall apportion their business income employing that method in order to properly apportion their business income to Illinois. Taxpayers whose business activity or market within Illinois is not fairly represented by a method prescribed in this Section and who want to use another method for a tax year beginning after the effective date of the rulemaking adopting that method may obtain permission to use that other method by filing a petition under Section 100.3390. For tax years beginning prior to the effective date of the rulemaking adopting a method of apportioning business income, the Department will not require a taxpayer to adopt that method; provided, however, if any taxpayer has used that method for any of those tax years, the taxpayer must continue to use that method for that tax year. Moreover, a taxpayer may file a petition under Section 100.3390 to use a method of apportionment prescribed in this Section for any open tax year beginning prior to the effective date of the rulemaking adopting that method, and that petition shall be granted in the absence of facts showing that that method will not fairly represent the extent of a person's business activity or market in Illinois.

Your petition indicates that the single-sales factor apportionment formula as applied to COMPANY2 does not fairly reflect the market activities as a result of their Illinois

operations. You indicate that property and payroll apportionment factors must be included as these are material requirements in producing those sales. In addition, you indicate it is reasonable to request those factors to be considered in the determination of the share of income attributable to Illinois as failing to do so would result in a significant gross distortion of COMPANY2's true economic activity and market within Illinois. Alternatively, your petition proposes the removal of throwback sales from the standard apportionment formula would result in a more equitable apportionment as the inclusion of these sales results in gross distortion of COMPANY2's true market within Illinois.

The facts stated in your petition are not sufficient to satisfy the burden set forth in Ill. Adm. Code Section 100.3390(c). As indicated above, for taxable years ending on or after December 31, 2008, alternative apportionment under IITA Section 304(f) is appropriate in cases where the allocation and apportionment provisions under IITA Sections 304(a) through (e) and of subsection (h) do not fairly represent the market for the taxpayer's goods, services, or other sources of business income. In this case, your petition does not meet the regulatory requirement and cannot be granted at this time. Your petition merely states that due to the statutory exclusion of the property and payroll apportionment factors, an evenly weighted three-factor formula consisting of property, payroll, and sales reaches a different apportionment percentage than the required statutory formula. The petition indicates that using an evenly weighted three-factor formula is expected to result in a smaller Illinois apportionment factor. An alternative apportionment method may not be invoked, either by the Department or by a taxpayer, merely because it reaches a different apportionment percentage than the required statutory formula.

In addition, the alternative proposal to exclude throwback sales does not address the first problem you identify, which is the statutory apportionment formula's failure to reflect the taxpayer's activities in Illinois. To the contrary, to the extent the throwback rule reflects the taxpayer's activities in Illinois, excluding throwback sales will exacerbate this problem. The intent of the throwback rule under IITA Section 304(a)(3)(B)(ii) is to ensure that 100% of a taxpayer's business income is apportioned to states that have the jurisdiction to do so. Excluding these sales would result in "nowhere income" that is not taxed by any jurisdiction, which is contrary to the legislative intent of the IITA. Therefore, the statutory formula correctly captures the taxpayer's business activity sourced from Illinois. The fact that the inclusion of throwback sales increases the Illinois sales factor numerator does not, in itself, constitute evidence of a grossly distortive or unfair representation of the taxpayer's market in this State. If the unitary group benefits from Illinois' markets and legal protections, the statutory formula - including throwback - is the presumed fair measure of that benefit.

Your petition is, therefore, nothing more than a showing that both proposed methods of alternative apportionment reach a different result than the statutory one. Accordingly, your

COMPANY2

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petition for alternative apportionment for tax years ended YEAR1, YEAR2, and YEAR3 cannot be granted.

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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