

General Information Letter: Various issues in the sales factor statute for broadcasting income are addressed.

February 16, 2010

Dear:

This is in response to your letter dated August 28, 2009, in which you request a letter ruling. 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).

In your letter you have stated the following:

Pursuant to Section 1200.120 of the Department's Public Information, Rulemaking and Organization regulations [2 Ill. Admin. Code, Part 1200], the COMPANY (COMPANY) hereby requests a General Information Letter (GIL) from the Department regarding the interpretation and application of section 304(a)(3)(B-7) and section 304(a)(3)(C-5)(iv) of the Illinois Income Tax Act (IITA) [35 ILCS 5/101 *et seq.*], which are amendatory additions made by P.A. 096-0763, and are effective for tax years ending on or after December 31, 2008.

P.A. 096-0763 makes it clear that the so-called "throw-out" rule embodied in section 304(a)(3)(C-5)(iv) – which excludes sales from the sales factor denominator of a taxpayer if the taxpayer is not taxable on such sales in the state in which services are received – does not apply to the apportionment of broadcast service income under section 304(a)(3)(B-7). If that is not the Department's understanding, please notify us immediately so we can clarify the issue. However, since you have confirmed this in discussions with Mr. Z, we do not anticipate any additional clarification will be required.

Additionally, in the interest of having a uniform and consistent application by our member companies of IITA Section 304(a)(3)(B-7) and 304(a)(3)(C-5)(iv) in the Illinois income tax returns they may file for tax years ending on or after December 31, 2008, we ask that the GIL confirm the following:

- A. The term "recipient" appearing in IITA section 304(a)(3)(B-7)(ii) is meant to refer only to a listener of a broadcast or a viewer of a broadcast.
- B. The term "recipients" appearing in IITA section 304(a)(3)(B-7)(iii) is meant to refer to all viewers or listeners considered for purposes of an "audience factor" of the programming that is broadcast.
- C. The term "customer" appearing in IITA section 304(a)(3)(B-7)(iv) refers to another broadcaster who is paying the taxpayer for the programming.
- D. The term "customer" appearing in IITA section 304(a)(3)(B-7)(v) is interchangeable with the word "person" appearing in the same paragraph and each term, "person" and "customer," refers to a broadcaster who pays the taxpayer for programming.

Response

Section 304(a)(3)(C-5) of the Illinois Income Tax Act (35 ILCS 5/304) expressly states that its provisions do not apply to transactions governed by Section 304(a)(3)(B-7), which applies to “receipts from the sale of broadcasting services.” Accordingly, the so-called throwout rule in Section 304(a)(3)(C-5)(iv) (which excludes from the numerator and denominator of the sales factor the gross receipts of any sale sourced under Section 304(a)(3)(C-5) to a state in which the taxpayer is not subject to tax) cannot apply to receipts from the sale of broadcasting services.

Section 304(a)(3)(B-7)(ii) provides:

In the case where film or radio programming is broadcast by a station, a network, or a cable system for a fee or other remuneration received from the recipient of the broadcast, the portion of the service that is received in this State is measured by the portion of the recipients of the broadcast located in this State. Accordingly, the fee or other remuneration for such service that is included in the Illinois numerator of the sales factor is the total of those fees or other remuneration received from recipients in Illinois. For purposes of this paragraph, a taxpayer may determine the location of the recipients of its broadcast using the address of the recipient shown in its contracts with the recipient or using the billing address of the recipient in the taxpayer's records.

In this provision, the term “recipients” refers to the viewers or listeners of the broadcast, from whom the taxpayer is receiving the fees or other remuneration for the broadcast.

Section 304(a)(3)(B-7)(iii) provides:

In the case where film or radio programming is broadcast by a station, a network, or a cable system for a fee or other remuneration from the person providing the programming, the portion of the broadcast service that is received by such station, network, or cable system in this State is measured by the portion of recipients of the broadcast located in this State. Accordingly, the amount of revenue related to such an arrangement that is included in the Illinois numerator of the sales factor is the total fee or other total remuneration from the person providing the programming related to that broadcast multiplied by the Illinois audience factor for that broadcast.

In this provision, the term “recipients” refers to the viewers or listeners of the broadcast, who are taken into account in computing the audience factor.

Section 304(a)(3)(B-7)(iv) provides:

In the case where film or radio programming is provided by a taxpayer that is a network or station to a customer for broadcast in exchange for a fee or other remuneration from that customer the broadcasting service is received at the location of the office of the customer from which the services were ordered in the regular course of the customer's trade or business. Accordingly, in such a case the revenue derived by the taxpayer that is included in the taxpayer's Illinois numerator of the sales factor is the revenue from such customers who receive the broadcasting service in Illinois.

In this provision, the term “customer” refers to the person who is paying the taxpayer for the programming.

Section 304(a)(3)(B-7)(v) provides:

In the case where film or radio programming is provided by a taxpayer that is not a network or station to another person for broadcasting in exchange for a fee or other remuneration from that person, the broadcasting service is received at the location of the office of the customer from which the services were ordered in the regular course of the customer's trade or business. Accordingly, in such a case the revenue derived by the taxpayer that is included in the taxpayer's Illinois numerator of the sales factor is the revenue from such customers who receive the broadcasting service in Illinois.

In this provision, the terms “customer” and “person” both refer to the broadcaster to whom the taxpayer is providing the programming and from whom the taxpayer is receiving payment.

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, you may contact me at (217) 782-7055.

Sincerely,

Paul S. Caselton
Deputy General Counsel – Income Tax