

General Information Letter: Exempt organizations are subject to Illinois income tax only on unrelated business taxable income.

August 3, 2010

Dear:

This is in response to your letter dated July 21, 2010 in which you request a letter ruling. The nature of your request and the information provided requires that we respond with a General Information Letter (GIL). 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).

Your letter states:

I am writing to request an official determination as to whether or not RESCUE, our not-for-profit charitable corporation, is required to file form IL-990-T, or any other forms, with the Illinois Department of Revenue.

We are a very small dog breed (DOG BREED) rescue group that was established in 200X. Our president and founder, who was handling organization paperwork, died suddenly and unexpectedly in June of 2009. Checking through the documents that she had, we found that she had accomplished IRS 501(c)(3) status and incorporated as a not-for-profit with the State of Illinois. We have since registered with the Illinois Attorney General's Office, which she had missed. The question then arose as to whether we need to file anything with IDOR.

We file IRS form 990-N, based on the fact that "the organization's gross receipts are normally \$25,000 or less," per IRS Publication 4221-PC (06-07), Compliance Guide for 501(c)(3) Public Charities.

Our State of Illinois Articles of Incorporation file # is XXXX-XXXX, filed with the Secretary of State on January XX, 200X.

Our 501(c)(3) acceptance letter is dated August XX, 200X; our employer ID # is XX-XXXXXXX. See copies attached.

Our IDOR file number is XXXXX-XXXXX – this was obtained by our attorney.

The attorney we have worked with reports that he and an associate have both checked with IDOR and been told that we do not need to file the IL-990-T. However, upon looking at the IL-990-T instructions, I noted it required information from the IRS 990-T, which we do not file. I therefore called the IDOR Taxpayer Assistance Division on June 22, 2010; I spoke with a lady named Ms. Z, who assured me we did not need to file anything with IDOR.

On July 9, 2010, another board member and I paid an in-person visit to the IDOR office in Des Plaines, where we spoke with Mr. Y. He looked at our documents, did a computer check, and then referred us to the "Who must file Form IL-990-T" section of the 2009 IL-990-T instructions. He advised us that our organization does not need to file this form, based on the fact that it refers to "unrelated business taxable income." He emphasized that that was the defining phrase. He gave as an example rental property owned by an organization, where the rental income is used to support the group's activities. We have no such unrelated income, and do

not anticipate having any in the future. At this time our only income source is contributions from individuals.

As we and our attorney have received these conflicting responses, we are requesting an official determination as to what, if anything, we need to file with IDOR.

## **RULING**

Section 502(a) of the Illinois Income Tax Act ("IITA" ; 35 ILCS 5/502(a)) sets forth the requirements for filing Illinois income tax returns. That section states in pertinent part as follows:

(a) In general. A return with respect to the taxes imposed by this Act shall be made by every person for any taxable year:

(1) For which such person is liable for a tax imposed by this Act, or

(2) In the case of a resident or in the case of a corporation which is qualified to do business in this State, for which such person is required to make a federal income tax return, regardless of whether such person is liable for a tax imposed by this Act.

Under this section, a nonresident must file an Illinois income tax return if it incurs a liability for tax imposed under Section 201 of the IITA, or in the case of a corporation qualified to do business in Illinois, if it is required to file a federal return. A nonresident is liable for Illinois income tax under Section 201 if it computes "Illinois net income" as defined under IITA Section 202. IITA Section 202 defines Illinois net income as that portion of the taxpayer's "base income" which is allocated or apportioned to Illinois under the provisions of Article 3 of the IITA, less certain deductions.

IITA Section 205 states that in the case of an organization exempt from federal income tax by reason of Section 501(a) of the Internal Revenue Code (IRC), base income means unrelated business taxable income as determined under IRC Section 512 but without deduction for Illinois income tax. An organization described in IRC Section 501(c)(3) is exempt from federal income tax by reason of IRC Section 501(a).

Applying the above provisions to the facts stated in your letter, you state that your organization does not have unrelated business taxable income. Therefore, the organization is not required to file an Illinois income tax return unless it is qualified to do business in Illinois and is required to file a federal income tax return. Under federal income tax law, an exempt organization is required to file U.S. Form 990-T if it has gross income from an unrelated business of \$1,000 or more. Your letter indicates that you are not required to file U.S. Form 990-T. Accordingly, based on the facts stated in your letter, your organization is not required to file an Illinois income tax return.

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. If you wish to obtain a PLR which will bind the Department, please submit a request conforming to the requirements of 2 Ill. Adm. Code § 1200.110(b).

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Sincerely,

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