

Private Letter Ruling: Educational institution providing both classroom and online classes should source tuition for online classes taken by students who are also taking classroom classes to the state in which the classroom is located.

September 6, 2011

Dear:

This is in response to your letter dated February 17, 2011, in which you request a Private Letter Ruling on behalf of COMPANY1, Inc. ("COMPANY1"). Review of your request for a Private Letter Ruling indicates that all information described in paragraphs 1 through 8 of subsection (b) of 2 Ill. Adm. Code 1200.110 is contained in your request. This Private Letter Ruling will bind the Department only with respect to the combined group that includes COMPANY1. Issuance of this ruling is conditioned upon the understanding that COMPAMY1 and/or any related taxpayer(s) is not currently under audit or involved in litigation concerning the issues that are the subject of this ruling request.

The facts and analysis as you have presented them are as follows:

STATEMENT OF FACTS

COMPANY1, is a for profit publically traded global provider of educational services and the parent organization of SCHOOL1, SCHOOL2, SCHOOL3, and SCHOOL4, SCHOOL5, SCHOOL6, SCHOOL7 and SCHOOL8 (collectively "COMPANY Schools"). These institutions offer a wide array of programs in business, healthcare and technology and serve students in middle school through postsecondary education, as well as accounting and finance professionals. COMPANY1 is incorporated under the laws of the State of STATE and maintains their executive offices in CITY.

COMPANY1 University is one of the largest private, degree-granting, regionally accredited, higher education systems in North America. Undergraduate and graduate degree programs are offered in the United States, COUNTRY, and through the internet ("online"). Graduate degree programs in management are offered through SCHOOL9. Students access these degree and certificate programs throughout XX campus locations in North America, as well as through SCHOOL7's online delivery platforms.

SCHOOL8 is one of the world's largest providers of medical and veterinary medical education. SCHOOL8 comprises of SCHOOL10, located in COUNTRY2, and SCHOOL11, located in COUNTRY2.

SCHOOL5 offers associate, bachelor's, master's and degree completion programs in nursing at its XX campuses in the United States and online.

CORPORATION subsidiaries, doing business as the COMPANY2, Inc. including the SCHOOL3 and SCHOOL4, prepares students for careers in healthcare through certificate, associate and bachelor's degree programs. These schools are located at various campuses in the western United States and online.

SCHOOL2 prepares candidates for the Certified Public Accountant examination, Charter Financial Analyst professional certification examination, and Project Management Professional

certification examination. It also offers continuing professional educational programs and seminars in accounting and finance. Classes are taught in nearly XX locations, including sites in XX foreign countries, SCHOOL7 teaching sites, and through self-study CD-ROMs and online.

SCHOOL1 partners with middle schools, high schools and school districts throughout the United States to develop and deliver customized online learning solutions.

SCHOOL6 is comprised of XX colleges that operate XX campus locations in COUNTRY3 that offer undergraduate and graduate programs focused in business management, law and engineering.

These entities are separate but related institutions that provide various educational programs for degree and non-degree seeking students domestically and internationally. The programs available to COMPANY1 students are nationally accredited in the fields of health sciences, media arts and technology, engineering and information sciences, and business.

Students attending SCHOOL7, SCHOOL8, SCHOOL5, SCHOOL3 and SCHOOL4 finance their education through a variety of sources. The sources of tuition includes government-sponsored financial aid including federal aid under Title IV of the Higher Education Act of 1965, private and university-provided scholarships, employer-provided tuition assistance, veteran's benefits, private loans and cash payments. Students attending the SCHOOL2 review courses are not eligible for federal or state financial aid, but may receive partial or full tuition reimbursements from their employers.

The COMPANY1 Schools' curriculum is offered in three learning platforms; in classroom courses, online, or a combination of both in classroom and online courses. For example, SCHOOL7 has offered online graduate programs since September 19XX, and online undergraduate programs since 20XX. SCHOOL7 offers nearly all of its undergraduate and graduate programs online. Students are allowed to attend lectures and view learning materials pertaining to these programs in classroom facilities, remotely online, and in some cases using both formats. This "mix and match" offering is also available at many of the COMPANY1 Schools. While SCHOOL1 only offers online education to middle and high school students, SCHOOL5 undergraduate and graduate programs are offered in a traditional classroom setting and online.

The COMPANY1 Schools, excluding SCHOOL6 and SCHOOL8, are part of COMPANY1's Illinois unitary combined group. For tax years ending on or after December 31, 2008, Illinois has adopted a market-based method for sourcing service income for apportionment purposes.

COMPANY1 receives the vast majority of its revenue from tuition payments. For purposes of determining the source of tuition or course payments, COMPANY1 considers the receipt of tuition for classroom learning in an Illinois facility if the location where the student is taking the class is located in Illinois. However, the source of tuition or course payments for an online class is not as easy to determine. Further, there are a number of COMPANY1 students benefiting from both in classroom and online learning environments for which the location of the delivery of services is also not easily determinable.

As a result of the various COMPANY1 learning platforms, it is possible, for example, that a student may remit tuition for courses while residing in State A, attend classroom lectures in State B, and view online lectures in State C. Such a situation creates the need for clarity regarding the sourcing of COMPANY1 services for purposes of determining the Illinois sales apportionment factor.

RULINGS REQUESTED

1. Illinois Income Tax Act ("IITA") Section 304(a)(3)(C-5)(iv), provides for the sourcing of gross receipts from the performance of services and should apply to the services that COMPANY1 provides to their students.
2. For educational programs consisting only of online courses, IITA Section 304(a)(3)(C-5)(iv) should permit COMPANY1 to source the tuition receipts based on the location of the student's billing address.
3. For educational courses that COMPANY1 offers where a student can mix and match the educational platforms between in classroom programs and online courses during a semester, COMPANY1 does not track the platforms that a student is using nor assigns the tuition payments to each platform. COMPANY1 requests the Department to permit COMPANY1 to source the tuition receipts based on the physical location of where the student attends the classroom courses.

DISCUSSION

The State of Illinois in P.A. 95-707, effective January 11, 2008 for tax years ending on or after December 31, 2008, adopted a market based approach for sourcing services in calculating the sales factor under the IITA. A new provision to IITA Section 304(a)(3) was added. IITA Section 304(a)(3)(C-5)(iv) provides:

Sales of services are in this State if the services are received in this State. For the purposes of this section, gross receipts from the performance of services provided to a corporation, partnership, or trust may only be attributed to a state where that corporation, partnership, or trust has a fixed place of business. If the state where the services are received is not readily determinable or is a state where the corporation, partnership, or trust receiving the service does not have a fixed place of business, the services shall be deemed to be 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. If the ordering office cannot be determined, the services shall be deemed to be received at the office of the customer to which the services are billed. If the taxpayer is not taxable in the state in which the services are received, the sale must be excluded from both the numerator and the denominator of the sales factor. The Department shall adopt rules prescribing where specific types of services are received for special types of services, including but not limited to, broadcast, cable, advertising, publishing, and utility services.(The last sentence to this subsection was amended by P.A. 96-793, effective August 25,2009,for tax years ending on or after December 31, 2008 to exclude broadcast, cable, advertising, because IITA Section 304(a)(3)(B-7) was added to address the sourcing of receipts for this industry.)

To date, the Department has not yet promulgated any regulations as authorized by the statute to provide guidance on where services should be received under the new sourcing provisions.

In the case of online courses, COMPANY1 cannot determine where a student is physically located while taking an online session/class, or where the student was located when they ordered the course. The only information that COMPANY1 knows is the address that the student has supplied to COMPANY1 when registering for the course and the billing address that the student has provided to COMPANY1, if different from the registration address.

IITA Section 304(a)(3)(C-5)(iv) addresses the situation where the services are not readily determinable.

If the state where the services are received is not readily determinable or is a state where the corporation, partnership, or trust receiving the service does not have a fixed place of business, the services shall be deemed to be 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. If the ordering office cannot be determined, the services shall be deemed to be received at the office of the customer to which the services are billed. If the taxpayer is not taxable in the state in which the services are received, the sale must be excluded from both the numerator and the denominator of the sales factor.

Under the framework of the statute, if the location of the services received is not readily determinable, the services are "deemed to be 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." Although the student does not have an office nor is engaged in a trade or business when ordering the courses, there is no way for COMPANY1 to determine where the order was placed from by the student.

The statute does provide for a default sourcing provision for services. "If the ordering office cannot be determined, the services shall be deemed to be received at the office of the customer to which the services are billed." The statute further limits the sourcing for all services, "if the taxpayer is not taxable in the state in which the services are received, the sale must be excluded from both the numerator and the denominator of the sales factor."

In the case where only online educational courses are provided to students, under the statute, the sourcing of these services should be based on where the "services are billed." If COMPANY1 is not taxable in the state in which the "services are billed" for online courses, the sale must be excluded from both the numerator and the denominator of COMPANY1's sales factor.

Finally, in the case of courses where the student can mix and match the educational platforms between in classroom programs and online courses, COMPANY1 does not determine what portion of the student's tuition payment is attributable to the in classroom courses and which are attributable to the online courses. In the case of in classroom courses, the services that COMPANY1 provides the students are received at the location where the students are attending the classes. For the online courses, COMPANY1 cannot determine where the students are actually taking those courses.

COMPANY1 believes that the tuition payments from mix and match educational platforms are best sourced to the location where the student is attending the in classroom courses. In most cases, the in classroom courses are in the same state as the student's billing address. Even if the student took a course from an online platform outside the student's billing address, the sourcing of the entire student's tuition to the classroom location would be a reasonable application of the Illinois market based sourcing rules.

DEPARTMENT RULING:

Your letter states that "COMPANY1 receives the vast majority of its revenue from tuition payments" and your three ruling requests relate to the sourcing of such tuition payments.

The first request is that IITA Section 304(a)(3)(C-5)(iv) "apply to the services that COMPANY1 provides to their students." The second and final requests are both an extension to the first: for students taking online courses only, COMPANY1 requests "to source the tuition receipts based on the location of the student's billing address," and "where a student can mix and match the educational platforms between in classroom programs and online courses ... to source the tuition receipts based on the physical location of where the student attends the classroom courses." Your three ruling requests do not cover sales of self-study CD-ROMS mentioned in your letter which are considered sales of tangible personal property governed by IITA Section 304(a)(3)(B).

At issue are educational services provided to students from various COMPANY1 Schools that are performed in classroom settings, online, or both. In an email dated July 25, 2011 you clarify that the COMPANY1

online courses are not capable of being downloaded to the students computer for viewing. They have to be viewed while connected through the internet. For example, in the case of SCHOOL2, their courses are offered in person, online and via self study CD-ROMS. You may be familiar with the SCHOOL2 CPA review courses. Students can go to a classroom and attend the course live. They also have the ability to go online and take a course that has already been pre-recorded. This course cannot be saved to the students computer. They have to view it through the SCHOOL2 Site while the student is connected via the internet. Finally they can take the course via CD-ROM at their own pace.

The additional information confirms that COMPANY1 online courses are a service and not canned computer software that can be downloaded and saved by students. This means both classroom and online courses offered by COMPANY1 are services provided to students and governed by the Illinois Income Tax Act ("IITA"), Section 35 ILCS 5/304(a)(3)(C-5)(iv):

(C-5) For taxable years ending on or after December 31, 2008, sales, other than sales governed by paragraphs (B) [sales of tangible personal property], (B-1) [gross receipts from patents, copyrights, trademarks, and similar intangible property], (B-2) [same - gross receipts from patents, copyrights, trademarks, and similar intangible property], (B-5) [sales of telecommunications service], and (B-7) [sale of broadcasting services] are in this State if any of the following criteria are met:

...

- (iv) Sales of services are in this State if the services are received in this State. For the purposes of this section, gross receipts from the performance of services provided to a corporation, partnership, or trust may only be attributed to a state where that corporation, partnership, or trust has a fixed place of business. If the state where the services are received is not readily determinable or is a state where the corporation, partnership, or trust receiving the service does not have a fixed place of business, the services shall be deemed to be 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. If the ordering office cannot be determined, the services shall be deemed to be received at the office of the customer to which the services are billed. If the taxpayer is not taxable in the state in which the services are received, the sale must be excluded from both the numerator and the denominator of the sales factor.

Applying the facts to the above cited statutory language, services provided in live classroom settings are to be sourced at the location where the student is physically located and participating in said live classrooms. If this same student is participating in both live and online classroom courses during the same time period, the sourcing of the entire student's tuition to the classroom location is appropriate. This is acceptable given that it is reasonable to assume a student regularly attending classroom courses who is also taking online courses will take both classroom and online courses in close proximity to one another.

When a student is taking online classes only, the location of the performance of services (location of students who are taking online classes) is unknown. The inability to identify where services are being performed requires that the default rules within the statutory language must apply. The first default provision involves the location of the "ordering office;" the second default provision reads "the services shall be deemed to be received at the office of the customer to which the services are billed." Applying the law to the facts at hand reveals that the "ordering office" would be the unknown location of the student's computer. The tuition billing addresses of enrolled students are identifiable and the logical choice for sourcing online classroom courses. However, the statute limits sourcing when the taxpayer is not taxable in the state in which the services are received. If the taxpayer is not taxable in the state of the enrolled students' billing address, such sales must "be excluded from both the numerator and the denominator of the sales factor." *Id.*

The factual representations upon which this ruling is based are subject to review by the Department during the course of any audit, investigation, or hearing and this ruling shall bind the Department only if the factual representations recited in this ruling are correct and complete. This Private Letter Ruling is revoked and will cease to bind the Department 10 years after the date of this letter under the provisions of 2 Ill. Adm. Code 1200.110(e) or earlier if there is a pertinent change in statutory law, case law, rules or in the factual representations recited in this ruling.

If you have questions concerning this Private Letter Ruling, you may contact me at (217) 782-2844. If you have further questions related to the Illinois sales tax laws, please visit our website at www.tax.illinois.gov or contact the Department's Taxpayer Information Division at (217) 782-3336.

IT 11-0002-PLR
September 6, 2011
Page 7

Very truly yours,

Terry D. Charlton
Chairman, Private Letter Ruling Committee