

General Information Letter: Insurance companies are not exempt from Illinois income taxation.

September 30, 2011

Dear:

This is in response to your letter dated August 16, 2011 regarding Illinois corporate income and replacement tax. The nature of your letter and the information provided require 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 86 Ill. Adm. Code 1200.120(b) and (c), which may be accessed from the Department's web site at [www.ILtax.com](http://www.ILtax.com).

Your letter states as follows:

I am the Treasurer for COMPANY (XXXX #XXXXX), domiciled in Illinois, and am responsible for the preparation of the premium tax returns in the 16 states where we are licensed. I'm trying to determine if the State of Illinois charges insurance companies domiciled in states other than Illinois the Illinois Corporation Income and Replacement Tax.

These premium tax returns usually have a Retaliatory Tax and Assessment section whereby a comparison of the Illinois taxes and assessments charged are compared to those charged by the other states which can lead to a retaliatory tax for our company.

Can you tell me if the State of Illinois charges the Illinois Corporation Income and Replacement Tax to insurance companies domiciled in the following states and if so is it subject to the retaliatory tax calculation?

[states omitted]

## **RULING**

Section 201(a) of the Illinois Income Tax Act ("IITA" ; 35 ILCS 5/201) imposes a tax, measured by "net income," upon every individual, corporation, trust and estate for the privilege of earning or receiving income in or as a resident of this State. Section 201(c) of the IITA imposes the Personal Property Tax Replacement Income Tax, also measured by "net income," on every corporation (including Subchapter S corporation), partnership and trust, for the privilege of earning or receiving income in or as a resident of this State. In general, for taxable years ending prior to January 1, 2015, the corporate income tax rate equals 7% of net income and the replacement tax rate 2.5% of net income.

The starting point in calculating "net income" for purposes of Section 201 is to first calculate the taxpayer's Illinois base income. Illinois base income is equal to the taxpayer's taxable income (or adjusted gross income in the case of an individual) for federal income tax purposes, adjusted for certain statutorily prescribed addition and subtraction modifications. See IITA Section 203. IITA Section 202 then defines net income as that portion of the taxpayer's "base income" as defined in Section 203, which is allocated or apportioned to Illinois under the provisions of Article 3 of the IITA, less certain deductions. Base income that constitutes nonbusiness income is allocated to Illinois under IITA Sections 301(c)(2) and 303. Base income that constitutes business income is apportioned to Illinois under IITA Section 304. IITA Section 304(c) provides the apportionment formula for an

insurance company. Under that section, the business income of an insurance company is apportioned to Illinois by multiplying such income by a fraction, the numerator of which is the direct premiums written for insurance upon property or risk in Illinois, and the denominator of which is the direct premiums written for insurance upon property or risk everywhere.

These provisions apply the same whether an insurance company is domiciled in Illinois or outside Illinois. However, under IITA Section 201(d-1), an insurance company formed under the laws of another state that imposes a retaliatory tax on Illinois insurance companies may reduce the otherwise applicable income and replacement tax rates. The rate is reduced such that the total amount of Illinois income and replacement tax imposed on the foreign insurance company is equal to the amount of income tax that its home state would have imposed on its Illinois income. The purpose of Section 201(d-1) is to eliminate retaliatory taxes imposed on Illinois insurance companies by other states that tax insurance companies at lower rates. For more information, See Department Schedules INS and UB/INS, which accompany Form IL-1120.

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 have questions regarding this GIL you may contact Legal Services at (217) 782-7055. If you have further questions related to Illinois income tax laws, visit our website at [www.revenue.state.il.us](http://www.revenue.state.il.us) or contact the Department's Taxpayer Information Division at (217) 782-3336.

Sincerely,

Brian L. Stocker  
Staff Attorney (Income Tax)