

General Information Letter: Income from sales of tangible personal property included in the federal taxable income of a taxpayer is included in base income of the taxpayer unless a specific subtraction is allowed.

September 10, 2012

Dear:

Your letter dated March 14, 2012 has been forwarded to me for a response to the income tax portion of your inquiry. Sales tax issues will be addressed in a separate letter from our sales tax division. Your letter states as follows:

Upon calling the Illinois State Gov., I was directed to writing to you (*sic.*). I sell PRODUCT1 and PRODUCT2 online to people in the United States primarily. I sell them at retail price.

Often these items are a medical necessity for asthma relief or chemical sensitives (*sic.*). Can the customer supply a prescription stating for medical relief of (the ailment), and I offer them low tax rate of 1%? What exactly do I need income tax-wise for this?

According to the Department of Revenue ("Department") regulations, the Department may issue only two types of letter rulings: Private Letter Rulings ("PLR") and General Information Letters ("GIL"). The regulations explaining these two types of rulings issued by the Department can be found in 2 Ill. Adm. Code §1200, or on the website <http://www.tax.illinois.gov/LegalInformation/regs/part1200>.

Due to the nature of your inquiry and the information presented in your letter, we are required to respond with a GIL. GILs are designed to provide background information on specific topics. GILs, however, are not binding on the Department.

Section 201 of the Illinois Income Tax Act ("IITA"), 35 ILCS 5/101 et seq, imposes a tax measured by net income "on every individual, corporation, trust and estate ... on the privilege of earning or receiving income in or as a resident of this State. Such tax shall be in addition to all other occupational or privilege taxes imposed by this State or by any municipal corporation or political subdivision thereof."

Net income for Illinois income tax purposes is a taxpayer's federal adjusted gross income ("AGI"). Accordingly, any sum properly excluded or deducted from income for federal purposes prior to the determination of AGI is effectively excluded from income for Illinois' purposes. Likewise, any sum required to be included income for federal purposes prior to the determination of AGI is effectively included income for Illinois' income tax purposes.

IITA Section 203 provides for certain addition and subtraction modifications to arrive at a taxpayer's Illinois base income. These modifications either add or subtract certain amounts of income from a taxpayer's federal AGI. However, none of these modifications to AGI described in Section 203 include a subtraction modification for items sold for medical necessities.

In terms of allocating your online sales throughout the United States, IITA Section 301 is applicable to you because you are an Illinois resident: "all items of income or deduction which were taken into account in the computation of base income for the taxable year by a resident shall be allocated to this State." Base income that constitutes business income from sales of tangible property is apportioned to Illinois under IITA Section 304(a)(3)(A) and (B):

(3) Sales factor.

(A) The sales factor is a fraction, the numerator of which is the total sales of the person in this State during the taxable year, and the denominator of which is the total sales of the person everywhere during the taxable year.

(B) Sales of tangible personal property are in this State if:

(i) The property is delivered or shipped to a purchaser, other than the United States government, within this State regardless of the f.o.b. point or other conditions of the sale; or

(ii) The property is shipped from an office, store, warehouse, factory or other place of storage in this State either the purchaser is the United States government or the person is not taxable in the state of the purchaser.

Section 502(a) of the IITA (35 ILCS 5/502(a)) sets forth the requirements for filing Illinois income tax returns. That section states:

(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.

As stated above, this is a general information letter which does not constitute a statement of policy that either applies, interprets or prescribes tax law. It is not binding on the Department. Should you have additional questions, please do not hesitate to contact our office.

Sincerely,

Heidi Scott
Associate Counsel -- Income Tax