

General Information Letter: A partnership that derives income from both lottery winnings and investment income is not excluded from partnership treatment as an entity formed for the sole purpose of playing the lottery, and if it derives more than 10% of its gross income from lottery winnings, it is not an investment partnership.

December 3, 2012

Dear:

This is in response to your letter dated November 29, 2012. 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:

After receiving your email correspondence of November 2, 2012, I have researched the matter further regarding the Illinois Lottery winnings. I have read over Sections 1501(a)(16) and 1501(a)(11.5) of the Illinois Income Tax Act. The act clearly states that "the term "partnership" does not include a syndicate, group, pool, joint venture, or other unincorporated organization established for the sole purpose of playing the Illinois State Lottery," therefore; it is not subject to replacement tax. The winnings are not taxable under a partnership, but are to be paid by the individual "partner" winners.

These winnings in turn were invested entirely; therefore this in turn has created an investment partnership, again not subject to replacement tax under the Illinois Income Tax Act. The proceeds are taxed under the individual "partner" recipients.

Taxes on all winnings and investment income have been paid to the State of Illinois on an individual level. If each were to be taxed separately, would you agree that each is a non-taxable entity for the State of Illinois under partnership taxation? If so, we can show the lottery winnings under the partnership and the investment income being received as a nominee for the individual partners. The investment income can be set up as a separate investment entity going forward.

Please take in to consideration the individual components that are each non-taxable in their own right and have been so that we may come to an equitable resolution of this matter.

Response

Section 205(b) of the Illinois Income Tax Act (35 ILCS 5/205) provides that partnerships are not subject to the regular Illinois income tax imposed under Section 201(a) and (b) of the Illinois Income Tax Act (35 ILCS 5/201), but that partnerships other than "investment partnerships" are subject to the personal property tax replacement income tax imposed under Section 201(c) and (d) of the Illinois Income Tax Act.

Section 1501(a)(16) of the Illinois Income Tax Act (35 ILCS 5/1501) defines "partnership" as follows:

The term "partnership" includes a syndicate, group, pool, joint venture or other unincorporated organization, through or by means of which any business, financial operation, or venture is carried on, and which is not, within the meaning of this Act, a trust or estate or a corporation; and the term "partner" includes a member in such syndicate, group, pool, joint venture or organization.

The term "partnership" includes any entity, including a limited liability company formed under the Illinois Limited Liability Company Act, classified as a partnership for federal income tax purposes.

As stated in your letter, the PARTNERSHIP is a partnership which does not merely collect and distribute Illinois lottery winnings, but invests those winnings. Accordingly, it is a partnership for purposes of the Illinois Income Tax Act.

Section 1501(a)(11.5)(A) of the Illinois Income Tax Act defines "investment partnership" as follows:

The term "investment partnership" means any entity that is treated as a partnership for federal income tax purposes that meets the following requirements:

- (i) no less than 90% of the partnership's cost of its total assets consists of qualifying investment securities, deposits at banks or other financial institutions, and office space and equipment reasonably necessary to carry on its activities as an investment partnership;
- (ii) no less than 90% of its gross income consists of interest, dividends, and gains from the sale or exchange of qualifying investment securities; and
- (iii) the partnership is not a dealer in qualifying investment securities.

Section 1501(a)(11.5)(B) of the Illinois Income Tax Act defines "qualifying investment securities" as follows:

the term "qualifying investment securities" includes all of the following:

- (i) common stock, including preferred or debt securities convertible into common stock, and preferred stock;
- (ii) bonds, debentures, and other debt securities;
- (iii) foreign and domestic currency deposits secured by federal, state, or local governmental agencies;
- (iv) mortgage or asset-backed securities secured by federal, state, or local governmental agencies;
- (v) repurchase agreements and loan participations;
- (vi) foreign currency exchange contracts and forward and futures contracts on foreign currencies;
- (vii) stock and bond index securities and futures contracts and other similar financial securities and futures contracts on those securities;
- (viii) options for the purchase or sale of any of the securities, currencies,

contracts, or financial instruments described in items (i) to (vii), inclusive;

(ix) regulated futures contracts;

(x) commodities (not described in Section 1221(a)(1) of the Internal Revenue Code) or futures, forwards, and options with respect to such commodities, provided, however, that any item of a physical commodity to which title is actually acquired in the partnership's capacity as a dealer in such commodity shall not be a qualifying investment security;

(xi) derivatives; and

(xii) a partnership interest in another partnership that is an investment partnership.

Because more than 10% of its income is comprised of lottery winnings, the PARTNERSHIP is not an investment partnership.

There is nothing in the Illinois Income Tax Act that could be read to exempt from taxation lottery winnings or income from "qualifying investment securities" received by a partnership that is otherwise subject to Illinois taxation, so the PARTNERSHIP is subject to Illinois' personal property tax replacement income tax on all such income.

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