

General Information Letter: Request to use alternative apportionment method for income passed through from a partnership cannot be granted based on information contained in the petition.

March 21, 2013

Dear:

This is in response to your letter dated March 15, 2013, in which you request permission to include in the net income of COMPANY only the amounts of business income apportioned to Illinois or nonbusiness income allocated to Illinois, as shown on the Schedules K-1-P it received from partnerships with Illinois activities, rather using than the statutorily-mandated apportionment formula for apportionment of business income derived from partnerships, pursuant to Section 304(f) of the Illinois Income Tax Act (the "IITA"; 35 ILCS 101 *et seq.*). The nature of your letter 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.revenue.state.il.us. For the reasons discussed below, your petition cannot be granted at this time.

In your letter you have stated the following:

COMPANY is an LLC which files as a partnership and whose sole source of income is from investment in other partnerships. Each of the partnerships it invests in provide a Federal Form K-1. Those partnerships that have Illinois activity provide an Illinois K-1. The entity is a Texas limited liability company.

The standard apportionment method does not fairly or accurately reflect the business activity in Illinois. There are no sales factors which the entity can use since the only information it has is the net ordinary income or loss from partnerships.

Therefore the entity requests that it be allowed to apportion to Illinois only the business income it receives from Illinois K-1s from other partnerships. There really is no other method for apportionment in this case since there is no sales activity which can be reported.

The method the partnership would use is to report on Line 43, the business income or loss for Illinois as reported to it from the various Illinois K-1s it receives. Similarly line 44 will reflect the nonbusiness income or loss reported on the Illinois K-1s it receives from other partnerships.

Response

Section 305(a) of the IITA provides:

The respective shares of partners other than residents in so much of the business income of the partnership as is allocated or apportioned to this State in the possession of the partnership shall be taken into account by such partners pro rata in accordance with their respective distributive shares of such partnership income for the partnership's taxable year and allocated to this State.

Section 305(b) of the IITA provides:

The respective shares of partners other than residents in the items of partnership income and deduction not taken into account in computing the business income of a partnership shall be taken into account by such partners pro rata in accordance with their respective distributive shares of such partnership income for the partnership's taxable year, and allocated as if such items had been paid, incurred or accrued directly to such partners in their separate capacities.

A partnership (including a limited liability company that has elected partnership treatment) is, by definition, a nonresident, and so would apply this section to income it receives from a partnership. See Section 1501(a)(14), (16) and (20) of the IITA. From your letter, it appears that COMPANY is requesting to determine its Illinois net income in accordance with this section, using the amounts reported to it on the Schedules K-1-P it receives from partnerships with Illinois activity. If that is the case, no petition under Section 304(f) of the IITA is necessary.

If COMPANY is requesting some other method of apportioning its income from partnerships, we will need additional information from you. Section 304(f) of the IITA provides:

If the allocation and apportionment provisions of subsections (a) through (e) and of subsection (h) do not fairly represent the extent of a person's business activity in this State, the person may petition for, or the Director may require, in respect of all or any part of the person's business activity, if reasonable:

- (1) Separate accounting;
- (2) The exclusion of any one or more factors;
- (3) The inclusion of one or more additional factors which will fairly represent the person's business activities in this State; or
- (4) The employment of any other method to effectuate an equitable allocation and apportionment of the person's business income.

Taxpayers who wish to use an alternative method of apportionment under this provision are required to file a petition complying with the requirements of 86 Ill. Adm. Code Section 100.3390, which may be found on the Department's web site at www.revenue.state.il.us.

Your request does not indicate in what manner the apportionment formula required under Section 304 of the IITA fails to fairly represent the extent of the business activities of COMPANY, nor (assuming the alternative apportionment method requested is not the method prescribed by Section 305 of the IITA) does it describe the alternative apportionment method that would fairly represent the extent of its business activity in Illinois.

Please note that 86 Ill. Adm. Code Section 100.3390(e)(1) requires a petition to be filed at least 120 days prior to the due date (including extensions) for the first return for which permission is sought to use the alternative apportionment method. Your petition was filed March 15, 2013, and will allow the

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taxpayer to use the requested method on original returns due on or after July 13, 2013, if ultimately granted.

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 still believe that your petition should be granted, please supplement the petition in accordance with the provisions of 86 Ill. Adm. Code Section 100.3390. If you have any questions, you may contact me at (217) 524-3951.

Sincerely,

Paul S. Caselton
Deputy General Counsel -- Income Tax